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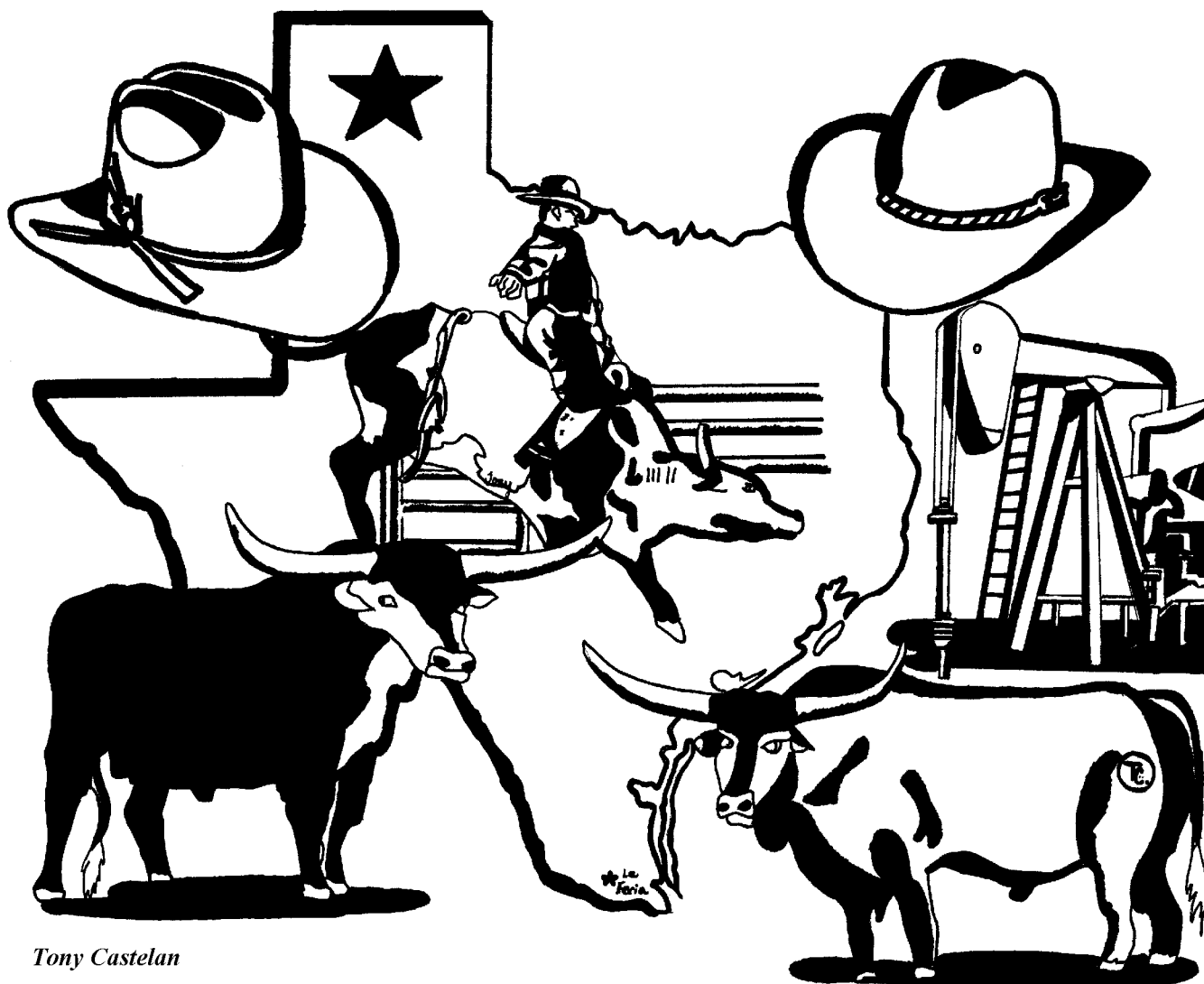
# TEXAS REGISTER

*Volume 30 Number 16*

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*Tony Castelan*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569  
<http://www.sos.state.tx.us>  
[subadmin@sos.state.tx.us](mailto:subadmin@sos.state.tx.us)

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# Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.  
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.  
<http://www.state.tx.us/Government>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

##### SUBCHAPTER A. GENERAL RULES

###### 1 TAC §20.33, §20.35

The Texas Ethics Commission proposes new §20.33 and §20.35, concerning the termination of the campaign treasurer appointment of an inactive candidate or an inactive political committee. House Bill 1606, 78th Legislature, Regular Session, requires the Texas Ethics Commission to adopt rules under which the commission may terminate the campaign treasurer appointment of an inactive candidate or an inactive political committee.

Section 20.33 defines inactive candidate and inactive political committee.

Section 20.35 provides notification requirements to the affected candidate or political committee.

David A. Reisman, Executive Director, has determined that for each year of the first five years the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that these rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be that inactive candidates and political committees whose campaign treasurer has been terminated will not continue to accumulate new reporting requirements.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because these rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to David A. Reisman, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and

location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new sections are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new sections affect Title 15 of the Election Code.

###### §20.33. Termination of Campaign Treasurer Appointment by Commission.

(a) The commission may terminate the campaign treasurer appointment of an inactive candidate or an inactive political committee.

(b) For purposes of subsection (a) of this section and §252.0131, Election Code, a candidate becomes "inactive" if the candidate files a campaign treasurer appointment with the commission and more than one year has lapsed since the candidate has filed any required campaign finance reports with the commission.

(c) For purposes of subsection (a) of this section and §252.0131, Election Code, a political committee becomes "inactive" if the political committee files a campaign treasurer appointment with the commission and more than one year has lapsed since the campaign treasurer of the political committee has filed any required campaign finance reports with the commission.

(d) This section does not apply to a candidate who has been elected to an office specified by §252.005(1) or (5), Election Code.

###### §20.35. Notice of Proposed Termination of Campaign Treasurer Appointment.

(a) Before the commission may consider termination of a campaign treasurer appointment under §20.33 of this title (relating to Termination of Campaign Treasurer Appointment by Commission) and §252.0131, Election Code, the commission shall send written notice to the affected candidate or political committee.

(b) The written notice must be given at least 30 days before the date of the meeting at which the commission will consider the termination of campaign treasurer appointment and must include:

- (1) The date, time, and place of the meeting;
- (2) A statement of the commission's intention to consider termination of the campaign treasurer;
- (3) A reference to the particular sections of the statutes and rules that give the commission the authority to consider the termination of the campaign treasurer; and
- (4) The effect of termination of the campaign treasurer appointment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 5, 2005.

TRD-200501434

David A. Reisman

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 463-5800

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

##### SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE COMMUNITIES IN SCHOOLS PROGRAM

###### 19 TAC §89.1501, §89.1502

The Texas Education Agency (TEA) proposes new §89.1501 and §89.1502, concerning the Communities In Schools (CIS) program. The new sections would establish definitions and the equitable funding formula for local CIS programs. The proposed new rules would implement the provisions of the Texas Education Code (TEC), Chapter 33, Service Programs and Extracurricular Activities, Subchapter E, Communities In Schools Program, which transfers the CIS program to the TEA from the Department of Family and Protective Services (DFPS), formerly known as the Department of Protective and Regulatory Services (DPRS).

The CIS program is a statewide youth dropout prevention program that provides effective assistance to Texas public school students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis. In 2003, the 78th Texas Legislature passed Senate Bill 1038 which transferred the CIS program from the DFPS, formerly known as the DPRS, to the TEA.

Senate Bill 1038 specified that on September 1, 2003, a reference in law or administrative rule to the DPRS that relates to the CIS program means the TEA and that a reference in law or administrative rule of the executive director of the DPRS that relates to the CIS program means the commissioner of education. The legislation also stated that a rule of the DPRS relating to the CIS program continues in effect as a rule of the commissioner of education until superseded by rule of the commissioner of education. Accordingly, the commissioner of education has proceeded with the rulemaking process to adopt provisions for the CIS program.

The CIS provisions in proposed new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter EE, Commissioner's Rules Concerning the Communities In Schools Program, will supersede those in 40 TAC Chapter 702, General Administration, Subchapter E, Memorandum of Understanding with Other State Agencies, and Chapter 704, Prevention and Early Intervention Services, Subchapter E, Communities In Schools.

Proposed new 19 TAC Chapter 89, Subchapter EE, would establish definitions and the equitable funding formula for local CIS programs. The proposal outlines the funding allocation for developing programs, fully-developed programs, and replication and

expansion of the CIS program. Provisions relating to other funding, special initiatives, and funding plans are also outlined.

During the preparation of the proposal, CIS state staff met with the executive directors of the local CIS programs. Their comments and recommendations have been considered during the development of the proposed rules.

Ernest Zamora, associate commissioner for support services and school finance, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Funding is established by a rider in the General Appropriations Act. The new rules would provide the structure under which these funds are allocated. The proposed new rules do not change the process through which the funds are distributed to local CIS programs.

Dr. Zamora has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be support for the CIS program, an exemplary youth dropout prevention program. As stated in the TEC, §33.152, it is the intent of the legislature that CIS operate throughout the state. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §33.156, which authorizes the agency to develop and implement an equitable formula for the funding of local Communities In Schools programs.

The new section implements the Texas Education Code, §§33.152, 33.156, 33.157, and 33.158.

###### §89.1501. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Communities In Schools (CIS) program--The statewide exemplary youth dropout prevention program authorized under the Texas Education Code (TEC), Chapter 33, Subchapter E (Communities In Schools Program), that provides effective assistance to Texas public school students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis.

(2) Developing program--A local CIS program that has received funding for up to four fiscal years, including the fiscal year in which funding was provided to develop a business plan.

(3) Expansion--The process of a fully-developed local CIS program establishing CIS services on a new school campus or in a new school district or expanding services to serve additional students on existing campuses, resulting in an increase of students served.



(4) Fiscal year--A one-year period beginning on September 1 of a calendar year and continuing through August 31 of the next calendar year.

(5) Fully-developed program--A local CIS program that has been in existence for more than four fiscal years or has opted to be treated as a fully-developed program for funding purposes.

(6) Funding formula--A formula used to determine the funding allocation to each program based on funds appropriated by the General Appropriations Act.

(7) Replication--The process of establishing a new local CIS program in an area of the state designated by the Texas Education Agency to be an area of critical need for a local CIS program.

(8) Special initiative--The implementation of a specialized activity to address dropout prevention within the context of the CIS model.

§89.1502. Funding.

(a) Equitable funding formula. As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section.

(b) Developing programs. Developing programs shall receive a specified funding amount each year for no more than four years, including the first-year start up funding, after which time they shall become fully-developed programs and their funding shall be determined by the funding formula established under subsection (c) of this section. Prior to the expiration of four years, a developing program may request to be considered as a fully-developed program in which the funding would then be determined under subsection (c)(1) - (3) of this section if approved by the TEA.

(c) Fully-developed programs. Fully-developed programs shall receive a specified funding amount each year to be allocated as set forth in paragraphs (1) - (3) of this subsection. The TEA may choose, for the purpose of minimizing disruption in services due to changes in funding allocation, to limit the annual amount of changes in funding allocation from one biennium to the next. This may include limiting the increase or decrease from the prior year funding to an amount no less than 5.0% and no more than 25% of the change produced by this subsection and/or establishing minimum and maximum funding amounts. The TEA shall allocate an amount of funds available for distribution based on the following criteria:

(1) an equal base amount of funds, as determined by the TEA;

(2) no less than 50% nor more than 80% of the specified funding amount based on a ratio of the relative proportion of students contracted by the program relative to the total number of students contracted by all fully-developed CIS programs; and

(3) no less than 5.0% nor more than 15% of the specified funding amount on the basis of the weighted financial resources of the individual communities and school districts, if less than the state average.

(A) Weighted financial resources will be determined using the following data elements for the first year of the preceding biennium:

(i) taxable property values determined in accordance with Government Code, Chapter 403, Subchapter M, for school districts listed in each program's contract;

(ii) students in membership, as reported by the school districts and verified by the TEA, in school districts listed in each program's contract; and

(iii) the number of economically disadvantaged students, as reported by the school districts and verified by the TEA, in school districts listed in each program's contract.

(B) Weighted financial resources of individual communities and school districts will be determined by:

(i) calculating the ratio of the number of economically disadvantaged students in each district divided by the total number of economically disadvantaged students in the program;

(ii) dividing the ratio of taxable property value of the district by the number of students in membership at the district;

(iii) multiplying the ratios calculated in clauses (i) and (ii) of this subparagraph for each district; and

(iv) summing the results of clause (iii) of this subparagraph for each program.

(d) CIS program replication and expansion. For program growth, the TEA may use any one or a combination of the following guidelines.

(1) Replication. The TEA may determine and retain a base funding amount for replication of the CIS program in areas of the state that are not served by a participating CIS program. Replication funds shall be made available through a competitive request for proposal process. First-year replication funding may be a one-time planning grant for the development of a business plan. Any funds not used for replication may be used for expansion.

(2) Proportion of at-risk students served. An amount determined by the TEA may be distributed to each individual CIS program based on the relative proportion of the number of at-risk students, as defined by the TEC, §29.081, attending school districts served or new districts contracted to be served by the respective program area compared to the number of at-risk students in all districts served by CIS.

(3) Proportion of total students contracted. An amount determined by the TEA may be distributed to each individual CIS program based on a ratio of the relative proportion of students contracted by the respective program relative to the total number of students contracted by all fully-developed CIS programs.

(4) Program allocation. An amount determined by the TEA may be distributed to each individual CIS program based on the ratio of the respective individual program's total allocation relative to the total amount allocated to all fully-developed CIS programs.

(5) Competitive process. Funds may be distributed through a competitive request for proposal process.

(e) Other funding. Should additional and/or other funding become available for CIS, these funds may be made available for local CIS programs for replication, expansion, and/or special initiatives and allocated through such processes as the TEA deems appropriate to include the guidelines and determinations delineated in subsection (d) of this section.

(f) Special initiatives. The TEA may partner or contract with other agencies or entities for the purpose of CIS to implement specialized activities or programs that address dropout prevention. Selection of local CIS programs for participation in the initiative may be determined by the TEA and partner, or contractor, depending on the variables of the initiative. Local CIS programs will have the discretion of whether to participate in the special initiatives.

(g) Funding plan. Each local CIS program shall develop a funding plan which ensures that the level of service is maintained if state funding is reduced.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 8, 2005.

TRD-200501480

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS**

#### **CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER A. THE BOARD**

##### **22 TAC §51.3**

The Texas State Board of Barber Examiners proposes an amendment to §51.3, concerning Administrative Fines, to change the penalty for first offense for failure to have a booth rental permit from "warning" to \$100.

The action was proposed to increase compliance by licensees and permit holders with the statutes and rules under which they are regulated and help ensure that all individuals engaged in barbering in a barber shop or specialty shop have the appropriate current license and permits issued by the Board.

Glenn Parker, Executive Director, has determined that for the first five year period the amendment is in effect there will be no fiscal impact for local government as a result of enforcing or administering the amended section. In addition, Mr. Parker has determined that for the first five year period the amendment is in effect, revenue to the state will increase by approximately \$10,000 per year as a result of the increase in fines and penalties for the violations of the amended section.

Mr. Parker has determined that for the first five year period the amendment is in effect, the public benefit will be a decrease in the number of individuals practicing barbering without a license or permit or with an expired license or permit, an increase in compliance by barbers and other licensees with the statutes and rules under which they are regulated, and an increase in funds available within the State's General Fund due to the collection of fines and penalties for violations of the section. There will be no cost to small businesses, micro-businesses or the general public.

Comments on the proposed amendment to the section may be submitted in writing within 30 days after the publication of the proposal in the *Texas Register* to Glenn Parker, Executive Director, State Board of Barber Examiners, 5717 Balcones Drive, Suite 217, Austin, Texas 78731-4203.

The amendment is proposed under the Texas Occupations Code, §1601.151 which provides the Texas State Board of Barber Examiners with the authority to adopt and enforce all

rules necessary for the performance of its duties, §1601.155 which provides the Board with the authority to set fees, and §1601.701 which provides the Board with the authority to impose administrative penalties.

No other code, article, or statute is affected by this amendment.

§51.3. *Administrative Fines.*

(a) (No change.)

(b) Fine Schedule:

Figure: 22 TAC §51.3(b)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501488

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 936-6333



### **PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD**

#### **CHAPTER 593. LICENSES**

##### **22 TAC §593.1**

The Texas Structural Pest Control Board proposes an amendment to §593.1, concerning Persons Required to Secure License. The proposal will codify statute language and clarify the requirements for each license category.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the applicants and licensees will understand the requirements of each license category and be provided with the correct statutory language. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest

Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

*§593.1. Persons Required to Secure License.*

(a) Business License-- [-]Any person engaged in structural pest control must secure a business license from the Board for each business location, including branch offices, in accordance with the Texas Structural Pest Control Act and the regulations of the Board. Each business license holder must [~~shall~~] designate a responsible certified commercial applicator for each business location who is not also serving as a responsible certified commercial applicator for any other business licensee or any other business location. No person shall engage in, offer to engage in, advertise for, solicit, or perform any of the services identified in Section 1951.002 of the Texas Structural Pest Control Act, for compensation, without first obtaining a business license and having a [~~an~~] certified commercial applicator certified in each license category in which business is conducted.

(b) Responsible Certified Commercial Applicator--The person licensed as a certified commercial applicator, who has been designated to be the responsible certified commercial applicator for a business license location, shall be responsible to provide training and direct supervision for pest inspections, identifications, and control measures of a licensed business. The person may be employed by other business license location(s) and licensed by each location as a certified commercial applicator, but must only be the responsible certified applicator for one business license location.

(c) Certified Commercial Applicator--The person licensed as a certified commercial applicator who can perform pest control services, identifications and control measures without direct supervision. A certified commercial applicator must be licensed for every business location for which the certified commercial applicator is employed.

(d) Certified Noncommercial Applicator--The person, who as an employee, is responsible for providing pest control services to a governmental entity, apartment building, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school or educational institution and other noncommercial entities. The person licensed as a noncommercial certified applicator shall be responsible to ensure training and direct supervision for pest inspections, identifications, and control measures of a noncommercial entity. A certified noncommercial applicator must be licensed for every business entity for which the certified noncommercial applicator is employed.

(e) Technician--The person who performs pest control services under the direct supervision of a certified applicator must obtain a technician license by meeting the standards prescribed by the Board in §593.21 of this title (relating to Technician License Standards). A technician must be licensed for every business or noncommercial entity for which the technician is employed.

(f) Apprentice--The person, who has made their initial application for a technician license, has not passed the technician examination and performs pest control services under the supervision of a licensed technician or a certified applicator.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501411

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 305-8270



**22 TAC §593.3**

The Texas Structural Pest Control Board proposes an amendment to §593.3, concerning Insurance Requirement. The proposal corrects a minor grammatical error in the regulation.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the all interested parties will know the legal way to perform service on a licensee of the Board. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

*§593.3. Insurance Requirement.*

(a) Each business license applicant and certified noncommercial applicator license applicant must submit a certificate of insurance with proof of coverage on the form provided by the Board in the amount of not less than \$200,000 for bodily injury and property damage coverage with a minimum total annual aggregate of \$300,000 for all occurrences. The insurance policy must insure applicant for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under applicant's care, custody, or control. No new business license or certified noncommercial applicator license will be issued until insurance requirements are met. Policies must contain a cancellation provision for notification to the Board not less than thirty (30) days prior to cancellation. Certified noncommercial applicators employed by governmental entities are exempt from this provision. Inactive certified applicators and technicians that do not perform structural pest control work for compensation or as a part of the duties of their employment are exempt from this provision.

(b) A licensee who operates as a wood treater who treats wood on commercial property owned by the licensee must submit with their application a general liability insurance policy or certificate of coverage

in the amount of not less than \$200,000 for bodily injury and property damage coverage with a minimum total annual aggregate of \$300,000 for all occurrences. No license will be issued until this insurance requirement is met. Policies must contain a cancellation provision for notification to the Board not less than thirty (30) days prior to cancellation.

(c) If payment of claims results in reducing the total aggregate of coverage below \$300,000, the insurance carrier must notify the Board and the licensee within thirty (30) days. The licensee must obtain additional coverage to meet the minimum requirements.

(d) The Board will consider as sufficient only those policies issued by insurers authorized by or registered with the Texas Department of Insurance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501412

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 305-8270



## 22 TAC §593.4

The Texas Structural Pest Control Board proposes an amendment to §593.4, concerning Resident Agent. The proposal includes all license categories and makes clear that if a resident agent is not designated, then the Texas Secretary of State will automatically be designated.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the all interested parties will know the legal way to perform service on a licensee of the Board. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

### §593.4. Resident Agent.

(a) Licensees and applicants' residing [reside] outside of Texas must designate in writing a resident agent for service of process in actions taken in the administration and enforcement of the Texas Structural Pest Control Act.

(b) Each resident agent must be a citizen of the state and maintain a permanent address within the state.

(c) Instead of designating a resident agent, the applicant may designate the Texas Secretary of State as the recipient of service of process for the applicant. The Texas Secretary of State is automatically designated as the recipient of service of process for the applicant absent a designation by the applicant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501413

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 305-8270



## 22 TAC §593.5

The Texas Structural Pest Control Board proposes an amendment to §593.5, concerning Examinations. The proposal does several updates to this regulation. First, out-of-state experience is clarified. The proposal also now incorporates computer based testing. The regulation received additional clarification on what is a pest and the changes also clarify some treatment methods. Also, the educational requirements were clarified when an applicant possesses a degree. Finally, the order was changed on some rules to provide clarity to a reader of the regulations.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the applicants and licensees will have the benefit of knowing what the requirements of getting a license. Furthermore, the Board's licensing categories are more defined, thus providing guidance to licensees on what type of pest control work can be done in each category. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

*§593.5. Examinations.*

(a) An individual who has previously qualified by written examination in a category shall receive a certified applicators license for the qualified category without reexamination upon renewal of a certified applicator license and meeting all requirements of the regulations. Each individual not previously qualified by written examination in the category or categories for which the license is requested must secure a certified applicator license by passing an appropriate examination administered by the Board.

(b) To qualify to take the Board [appropriate] examination for obtaining a certified commercial applicator license, the applicant must meet one of the following requirements:

(1) Have verifiable employment in the pest control industry under the supervision of a licensed certified [commercial] applicator for at least twelve (12) months out of the past twenty-four (24) months and must have possessed a technician license for at least six (6) months.

(2) Furnish proof of previous verifiable employment, experience in the pest control industry, including out-of-state experience in pest control of at least twelve (12) months out of the past twenty-four (24) months from a previous occupation. The proof of experience must be provided by the applicant in the form of a notarized statement or a letter from the appropriate licensing entity.

(3) Have a degree or certificate in an area of the biological sciences, related to pest control, from an accredited two (2) or four (4) year college or university;

(4) An applicant with equivalent technical pest or pesticide field experience from a previous occupation; and

(5) Qualifies under the hardship clause outlined in §593.8 of this title (relating to Loss of Certified Applicator or Business License Holder).

(6) Each applicant testing for a certified applicator license must pass the general standards examination administered by the Board to be eligible to be licensed in any of the categories in subsection (d)(12) of this section, Categories of Examinations

(c) In order to qualify to take the Board examination for obtaining a certified noncommercial applicators license, the applicant must meet one of the following requirements:

(1) Have a degree or certificate in an area of the biological sciences related to pest control from an accredited two (2) or four (4) year college or university;

(2) Have verifiable employment experience in the pest control industry, including out-of-state experience in pest control of at least twelve (12) months out of the past twenty-four (24) months from a previous occupation. The proof of experience must be provided by the applicant in the form of a notarized statement or a letter from the appropriate licensing entity.

(3) Complete a Board approved minimum six (6) hour certified noncommercial technician training course;

(4) Have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least twelve (12) months out of the past twenty-four (24) months and must have possessed a technician license for at least six (6) months.

[(e) The examination procedure will be as follows:]

[(1) Examinations will be given at the discretion of the Board at least once each quarter based on the calendar year.]

[(2) A fee shall be charged for each examination administered by the Board.]

[(3) All examination fees are to be paid by the method determined by the Board and payment should be submitted with the completed application.]

[(4) Applicants must present a photo identification from the Texas Department of Public Safety or its equivalent from another state prior to taking an examination.]

[(5) All examinations shall be maintained and administered by the Board or at a Board approved site.]

[(6) The applicant must take an examination, which must be in written or electronic form and in general, cover the subject of the categories designated on the application.]

[(7) A grade of 70% will be the minimum grade required for passing.]

[(8) The applicant for the certified applicator examination must be able to read and write the English language.]

[(9) An applicant who gives or receives unauthorized assistance during an examination shall be dismissed from the examination and results of that applicant's examination shall be voided. The applicant will not be allowed to take an examination again for the next twelve (12) months.]

[(10) Applicants who do not take a scheduled examination may not receive a refund of their examination fee unless they notify the Board in writing at least ten (10) business days in advance of the examination date. Exceptions may be granted if there is an emergency such as a death or serious illness in the family.]

[(11) Persons who make a passing grade and qualify and qualify for a certified applicator license must obtain a license within twelve months of the grade notification date or be retested.]

[(12) Categories in which examinations are to be given for which licenses will be issued are as follows:]

[(A) Pest Control—This category includes persons engaged in the inspection or control of pests in and around structures or pest animals which may invade homes, restaurants, stores, and other buildings, attacking their contents or furnishings or being a general nuisance, but do not normally attack the building itself. Examples of such pests are cockroaches, silverfish, ants, fleas, ticks, flies, mosquitoes, rats, mice, skunks, raccoons, opossums, etc.]

[(B) Termite and Wood Destroying Insect Control—This category includes persons engaged in the inspection or control of termites, beetles, or other wood destroying insects and wood preservation by means other than fumigation in buildings, including homes, warehouses, stores, docks, or any other structures. This category includes the treatment of termites in trees in and around structures.]

[(C) Lawn and ornamental—This category includes persons engaged in the inspection or control of pests or diseases of trees,

shrubs, or other plantings in a park or in and around structures, business establishments, industrial parks, institutional buildings or streets.}]

[(D) Weed Control--This category includes persons engaged in the inspection or control of weeds around homes and industrial environs.}]

[(E) Structural Fumigation--This category includes persons engaged in pest inspection or control through fumigation of structures not primarily intended to contain food, feed or grains}]

[(F) Commodity Fumigation--This category includes persons engaged in pest inspection or control through fumigation of commodities and/or structures normally used to contain commodities.}]

[(G) Wood Preservation--This category includes persons engaged in that phase of pest control that involves the addition of preservatives to wood products to extend the life of the wood products by protecting them from damage caused by insects, fungi, and marine borers. Examples of wood products may include, crossties, poles, and posts. This includes the retreatment of power-line poles with wood preservative pesticide including fumigants.}]

[(13) Each applicant testing for a certified applicator license must pass the general standards examination administered by the Board to be eligible to be licensed in any of the categories in this section.}]

(d) The examination procedure will be as follows:

(1) Examinations will be given at the discretion of the Board at least once each quarter based on the calendar year.

(2) A fee shall be charged for each examination administered by the Board.

(3) All examination fees are to be paid by the method determined by the Board and payment should be submitted with the completed application.

(4) Applicants must present a photo identification from the Texas Department of Public Safety or its equivalent from another state prior to taking an examination.

(5) All examinations shall be maintained and administered by the Board or at a Board approved site.

(6) The applicant must take an examination, which must be in written or electronic form and in general, cover the subject of the categories designated on the application.

(7) A grade of 70% will be the minimum grade required for passing.

(8) The applicant for the certified applicator examination must be able to read and write the English language.

(9) An applicant who gives or receives unauthorized assistance during an examination shall be dismissed from the examination and results of that applicant's examination shall be voided. The applicant will not be allowed to take an examination again for the next twelve (12) months.

(10) Applicants who do not take a scheduled examination may not receive a refund of their examination fee unless they notify the Board in writing at least ten (10) business days in advance of the examination date. Exceptions may be granted if there is an emergency such as a death or serious illness in the family.

(11) Persons who make a passing grade and qualify for a certified applicator license must obtain a license within (12) twelve months of the grade notification date or be retested.

(12) Examinations in the following categories will be offered by the Board.

(A) Pest Control--This category includes persons engaged in the inspection or control of pests in and around structures or pest animals which may invade homes, restaurants, stores, and other buildings, attacking their contents or furnishings or being a general nuisance, but do not normally attack the building itself. Examples of such pests are cockroaches, silverfish, ants, fleas, ticks, flies, mosquitoes, rats, mice, skunks, raccoons, opossums, etc.

(B) Termite and Wood Destroying Insect Control--This category includes persons engaged in the inspection or control of termites, beetles, or other wood destroying insects and wood preservation by means other than fumigation in buildings, including homes, warehouses, stores, docks, or any other structures. This category includes the treatment of termites in trees in and around structures.

(C) Lawn and ornamental--This category includes persons engaged in the inspection or control of pests or diseases of trees, shrubs, or other plantings in a park or in and around structures, business establishments, industrial parks, institutional buildings or streets.

(D) Weed Control--This category includes persons engaged in the inspection or control of weeds around homes and industrial environs.

(E) Structural Fumigation--This category includes persons engaged in pest inspection or control through fumigation of structures not primarily intended to contain food, feed or grains.

(F) Commodity Fumigation--This category includes persons engaged in pest inspection or control through fumigation of commodities or structures normally used to contain commodities. This category does not include raw agricultural commodities.

(G) Wood Preservation--This category includes persons engaged in that phase of pest control that involves the addition of preservatives to wood products to extend the life of the wood products by protecting them from damage caused by insects, fungi, and marine borers. Examples of wood products may include, crossties, poles, and posts. This includes the retreatment of power-line poles with wood preservative pesticide including fumigants.

(13) Each applicant testing for a certified applicator license must pass the general standards examination administered by the Board to be eligible to be licensed in any of the categories in this section.

[(d) In order to qualify to take the Board examination for obtaining a Certified Noncommercial Applicators license, the applicant must meet one of the following requirements:]

[(1) Have a degree or certificate in an area of the biological sciences related to pest control from an accredited two (2) or four (4) year college or university;]

[(2) Have verifiable employment experience in the pest control industry, including out-of-state experience in pest control of at least twelve (12) months out of the past twenty-four (24) months from a previous occupation. The proof of experience must be provided by the applicant in the form of a notarized statement or a letter from the appropriate licensing entity.]

[(3) Complete a Board approved minimum six (6) hour certified noncommercial technician training course;]

[(4) Have verifiable employment in the pest control industry under the supervision of a licensed certified applicator for at least twelve (12) months out of the last twenty-four (24) months and must have possessed a technician license for at least six (6) months.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501414

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 305-8270



## 22 TAC §593.6

The Texas Structural Pest Control Board proposes an amendment to §593.6 concerning License Expiration. The proposal will provide clarification. The requirement will also incorporate the statutory requirements of Occ. Code §1951.302. Lastly, the two year requirement on certified non-commercial applicators is changed to one year. This change will bring the Board's licensing requirements closer to the Board's actual requirements for licensing commercial applicators.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that non-commercial applicator licensing requirements will be more consistent with commercial applicator requirements. There will be less ambiguity in the rules with these changes. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

### §593.6. *License Expiration and Renewal*.

(a) Each license(s) may expire in twelve (12) months from the date issued or immediately upon the date that the business liability insurance expires, whichever comes first. The insurance expiration date will be determined by the date on the certificate provided to the Board by the business licensee, and any policy amendments or cancellation notices issued after the effective date.

(b) Businesses and certified noncommercial applicators that change insurance coverage during a licensed period may have the license expiration extended to the new policy date, if there has not been a lapse in coverage, by paying additional license fees for each license to the new expiration date. Certified applicators and technicians who change employers may also pay additional license fees to the new expiration date of the business or other entity under which they are operating. Refer to §593.7 (Fees) for additional license fees.

(c) Businesses and certified noncommercial applicators that allow insurance coverage to lapse or who fail to provide continuous proof of coverage to the Board as a result of insurance changes will no longer have a valid license(s). Reinstatement of licenses will be made upon payment of a new business license fee and any other additional fees that may be required without receiving credit for any license period between the date of the lapse in coverage and the original license expiration date.

(d) Licenses must be renewed by submitting an application to the Board, paying the required fee, and meeting any additional requirements of the Board under Section 593.3 of this title (relating to Insurance Requirements) and subsection (h) of this section, 30 days prior to the license expiration date. Renewal applications received after the license expiration date are subject to the late fees prescribed in the Texas Structural Pest Control Act, Section 1951.310. An application is not considered to be submitted unless it is in substantially correct form with the correct fees. Incomplete renewal applications received on or before the license expiration date may also be subject to late fees.

(e) Licenses issued by the Board must not be transferred, borrowed, rented, leased or loaned

(f) Whenever a licensee changes the mailing address, business location address or telephone number, the licensee must notify the Board in a written or electronic manner within ten (10) business days of the effective date of the change. License may be reprinted upon payment of fee.

(g) The Board, in determining whether additional testing or training must [shall] be required of current licensees before renewal of their license, may consider changes in technology, pesticide related problems, the performance of individual licensees or competency of individual licensees. If general retraining or retesting is required for all applicators in a category or subcategory, the Board will publish notice at least six months in advance of the license renewal date. If individual retraining or testing is required as a result of the applicator's performance or inability to perform, the Board may give notification and set a time and place of retraining.

(h) All certified applicators are required to certify to the Board the number of category(ies) of continuing education credits they have accumulated during the previous year pursuant to §593.23 of this title (relating to Continuing Education Requirements for Certified Applicators).

(i) Certified noncommercial applicators who have been licensed for a minimum of one year may become certified commercial applicators by requesting an additional license or change of license and paying the required license fee. Certified commercial applicators may become certified noncommercial applicators by requesting an additional license or change of license and paying the required license fee[, listing the name and address of the entity employing them and providing proof of liability insurance coverage as required by §593.3 of this title (relating to Insurance Requirement)].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501415

Dale Burnett

Executive Director

Texas Structural Pest Control Board

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 305-8270



## 22 TAC §593.7

The Texas Structural Pest Control Board proposes an amendment to §593.7 concerning Fees. The proposal will provide clarification as to the length of time a license will run.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that licensees will know exactly the length of time of their license. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

### §593.7. Fees.

(a) Applicants, licensees and continuing education providers will be charged the following fees:

- (1) \$180 for an original business license;
- (2) \$175 for renewal of a business license;
- (3) \$85 for an original certified applicators license;
- (4) \$80 for renewal of a certified applicators license;
- (5) \$65 for an original technician license;
- (6) \$60 for an renewal of a technician license;
- (7) \$30 for duplicate business license, certified applicator license or technician license when the original has been lost or destroyed;
- (8) \$30 for reissuing a business license, certified applicators license or technician license due to a name change in the license;

(9) \$40 for administering exams in each category;

(10) \$37.50 for late renewal fee for applications received 1 day to 30 days after expiration date;

(11) \$75 for late renewal fee for applications received 31 to 60 days after expiration date; and

(12) \$40 for continuing education course.

(b) The following fees are based on increments of six (6) months.

### (1) Business License Fees

- (A) Issued for 1 day-6 months \$92.50
- (B) Renewed for 1 day-6 months 87.50
- (C) Issued for 7-12 months \$180.00
- (D) Renewal for 7-12 months \$175.00
- (E) Issued for 13-18 months \$262.50
- (F) Renewal for 13-18 months \$262.50

### (2) Certified Applicator License Fees

- (A) Issued for 1 day-6 months \$45.00
- (B) Renewed for 1 day-6 months \$40.00
- (C) Issued for 7-12 months \$85.00
- (D) Renewal for 7-12 months \$80.00
- (E) Issued for 13-18 months \$120.00
- (F) Renewal for 13-18 months \$125.00

### (3) Technician License Fees

- (A) Issued for 1 day-6 months \$35.00
- (B) Renewed for 1 day-6 months \$30.00
- (C) Issued for 7-12 months \$65.00
- (D) Renewal for 7-12 months \$60.00
- (E) Issued for 13-18 months \$95.00
- (F) Renewal for 13-18 months \$90.00

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 305-8270



## 22 TAC §593.11

The Texas Structural Pest Control Board proposes an amendment to §593.11 concerning Certified Noncommercial Applicator Restrictions. The proposal will provide grammatical changes.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering



the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the rule's language will be clarified. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

*§593.11. Certified Noncommercial Applicator Restrictions.*

A certified noncommercial applicator may not perform commercial pest control services or perform any structural pest control services for a person other than the employer for whom the applicator is certified as a certified noncommercial applicator. A certified noncommercial applicator must not be [who has not been] associated with a licensed structural pest control business unless the applicator is also a certified commercial applicator or technician.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



**22 TAC §593.21**

The Texas Structural Pest Control Board proposes an amendment to §593.21 concerning Technician License Requirements. The proposal will do many things. The first change will make clear some of calendar time lines for getting a technician's license. The changes will also add some additional requirements for submitting a correct application. Other changes are grammatical in nature or the changes were made to reflect the change in the statutory name. Another change was made on the renewal date. This change clearly spells out that the birthdate is the demarcation line for making a determination on renewals.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering

the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the rule will let all concerned parties know what information the Board is reviewing when considering applications. For license applicants, the benefit will be that all time lines are now clearly defined including the time line on when the renewal period will begin. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

*§593.21. [~~Commercial and NonCommercial~~] Technician License Requirements.*

(a) Definition. An apprentice in any of the categories administered by the Texas Structural Pest Control Board is a beginning employee, who works under the supervision of trained and licensed personnel.

(b) Must be at least 16 years of age.

(c) Must be able to demonstrate proficiency in reading U.S. Environmental Protection Agency approved pesticide labels and warnings.

(d) Must submit an application for technician license within ten (10) days of beginning employment.

(e) The application must include the following information:

- (1) legal name;
- (2) physical home address;
- (3) date employment began in licensed activity;
- (4) social security number;
- (5) driver's license number;
- (6) date of birth; and
- (7) disclosure of criminal background.

(f) A fee shall be charged for each application.

(g) An apprentice card will be issued by the Texas Structural Pest Control Board for one (1) year from the date employment began when all of the above requirements are met and processed.

(h) Apprentices must not perform any pest control work without the physical presence of a licensed technician or a certified applicator. Documentation of training given must be entered on the verifiable training form within five (5) days. Upon completion of the following study and on-the-job training, the apprentice may work alone so long as a certified applicator is physically present for personal instruction three (3) days a week. The studies and job training required are as follows:

(1) complete at least two hours of classroom training in each of the following subjects:

- (A) federal and state laws that regulate the industry;
- (B) recognition of pests and pest damage;
- (C) pesticide labels and label comprehension;
- (D) pesticide safety;
- (E) environmental protection;
- (F) application equipment and techniques;
- (G) pesticide formulations and actions;
- (H) emergency procedures, pesticide cleanup and procedures for immediate reporting of spills and misapplication;
- (I) basic principles of mathematics, chemistry, toxicology and entomology; and
- (J) non-chemical pest control techniques, including biological, mechanical and prevention techniques.

(2) complete forty (40) hours of verifiable on-the-job training and eight (8) hours of classroom training in each category in which the apprentice is to provide pest control services. The business license holder, certified commercial applicator or the certified noncommercial applicator must certify in the training records of each employee that the apprentice has completed the required training and has demonstrated competency in each category in which the apprentice is to provide service. [;]

(3) a student currently enrolled in or who has attended or graduated within the past twelve months from an accredited school or university studying relevant materials may be credited with those courses for classroom training hours for apprenticeship, if those hours have been provided by the school or university.

(4) an apprentice must maintain an apprentice card for a maximum of twelve (12) months. If apprentice has not passed the requirements to become a licensed technician, the individual may re-apply as an apprentice and complete all training requirements for an apprentice.

(i) Apprentice Records.

(1) The business licensee or certified noncommercial applicator must maintain the verifiable training records and certification for each apprentice in the business files. These are to be kept at least two (2) years after termination of employment.

(2) The above records are to be kept on a form prescribed by the Board and must include, but not limited to the following:

- (A) date training records received;
- (B) number of hours of training;
- (C) subject of training;
- (D) name of trainer and license number;
- (E) designation of on-the-job training or classroom training; and

(F) competency evaluation by the certified applicator.

(j) When an apprentice changes employers, the employer who provided the verifiable training must make the verifiable training records available to the apprentice or the new employer within twenty (20) days of written request.

(k) It is a violation of this section for a business licensee or certified noncommercial applicator to allow an apprentice to perform work in a category in which the apprentice has not been properly trained. The certified applicator must be physically present to give personal instructions to an apprentice at least three (3) days a week.

(l) An apprentice becomes a licensed technician by;

(1) completing a Board approved technician training course in [the] general training at least one time prior to taking the examination.

(2) making a passing grade on the technician examination.

(A) The examination may be taken as many times as necessary in the twelve (12) month period the employee is holding an apprentice card.

(B) There shall be a fee charged per category.

(C) The Technician Training Manual may be obtained from Texas Cooperative Extension [Service].

(D) An individual must pass each category of the examination in which the apprentice has trained to become licensed. Re-examination is not necessary if the license is renewed annually.

(E) Examination dates and locations are at the discretion of the Board.

(3) Persons making a passing grade and who qualify for a technician license will be issued a license upon issuance of the grades.

(m) All testing procedures shall be governed by §593.5(c)(3) - (11) of this title (relating to Examinations).

(n) The Board shall require as a condition to the renewal of each commercial or non-commercial technician's license [~~prior to the birth date~~] granted pursuant to the provisions of this section, the responsible certified applicator of record will certify on the verifiable training records form that the technician has completed eight (8) hours of verifiable training for the preceding (12) twelve months of the renewal date. This certification must be verified upon each annual renewal of the technician [~~technician's~~] license. Failure to do so will prevent the license from being issued. Licensees must obtain the appropriate number of verifiable training hours in a 12-month period. Changing employers or moving to an inactive status does not alleviate this responsibility or add time to the continuing education requirements.

(1) The eight (8) hours will be covered in the following subject areas:

(A) Federal and state laws regulating structural pest control and pesticide application

(B) Recognition of pest and pest damage

(C) Pesticide labels and label comprehension

(D) Pesticide safety

(E) Environmental protection

(F) Application equipment and techniques

(G) Pesticide formulations and actions

(H) Emergency procedures and pesticide cleanup, and procedures for the immediate reporting of spills and misapplications

(I) Basic principles of mathematics, chemistry, toxicology, and entomology

(J) Non-chemical pest control techniques including biological, mechanical and prevention techniques.

(2) Two (2) hours of the eight (8) hours of training may be ~~on-the-job [on the job]~~ training or hands-on-training ~~[hands on training]~~ verified by the responsible certified applicator.

(3) Internet training or videotape training may be used if the certified applicator certifies that the training is the appropriate training.

(4) A technician will receive an hour for hour credit if a Board approved continuing education unit course is completed.

(5) No courses may be repeated for credit within the same recertification year.

(o) Upon written request, the Executive Director may grant a hardship extension to a technician due to extenuating circumstances.

(p) All verifiable training records must be made available to the Board upon request. These verifiable training records ~~[from]~~ must ~~[shall]~~ be kept on a format provided by the Board in the business file for at least two (2) years after termination of employment.

(q) The verifiable training records forms will be made available to the licensee within twenty (20) days of written request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

TRD-200501418

Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



## 22 TAC §593.23

The Texas Structural Pest Control Board proposes an amendment to §593.23, concerning Continuing Education Requirements for Certified Applicators. The proposal will do many things. The reference change from gender to licensee reflects the use of the correct language. The change on time is made to reflect that individuals will change employers. The other changes reflect the conditions for hardship as listed in 22 TAC §593.8. The deletion of the reference to the Board reflects the actual practice that the Executive Director decides hardship requests. Lastly, the change on records is made to be consistent with the proposed change to 22 TAC §593.21(j).

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase

in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that the rule will clarify the time requirements for a certified applicator getting his continuing education units. The other changes will enable licensees to obtain their records so they can timely renew their license. The hardship change will provide clarity and consistency with 22 TAC §593.8. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

*§593.23. Continuing Education Requirements for Certified Applicators.*

(a) Except as provided in subsections (e) and (f) of this section, the Board shall require as a condition to the renewal of each certified applicator license granted pursuant to the provisions of this section, that the holder thereof certify to the Board that the licensee has completed courses of continuing education approved by the Board that cover the applicator's category(ies) of certification for the preceding twelve (12) months ~~[from licensee's date of birth]~~. This certification must be completed upon each renewal of the certified applicator's license. Failure to do so will prevent the license from being renewed. Licensees must obtain the appropriate number of continuing education units in a 12-month period. Changing employers or moving to an inactive status does not alleviate this responsibility or add time to the continuing education unit requirement.

(b) Each certified applicator is required to obtain two (2) units in general training and one (1) unit in each category in which the applicator is certified. General training is defined to include the topics included in the Texas Structural Pest Control Act, Section 1951.351(c). Of the two (2) general training units required for recertification, at least one (1) must be in federal and state laws, pesticide safety, environmental protection, or integrated pest management. The other may be in any general topic.

(c) No approved course may be repeated for credit within the same recertification year.

(d) No more than one (1) unit each year may be obtained through a self-study or electronic course.

(e) Applicators will not be required to obtain units for the first year in which their license is issued. Applicators who become certified in additional categories during any annual renewal period will not be required to obtain units in those categories for that period.

(f) Upon written request, the Executive Director may grant a hardship extension to a certified applicator due to extenuating circumstances. The length of the hardship is at the discretion of the Executive Director.

(g) Each certified applicator must keep a certificate of completion for each course attended for a period of two years, and submit such records to the Board on request. These records are subject to inspection by Board personnel at any time. Continuing education certificates will be made available to the licensee within twenty (20) days of the written request.

(h) The penalty for falsifying continuing education records is a fine of \$2500 to \$5000, a revocation of a license for a minimum of one (1) year and re-testing by the certified applicator.

(i) Certified applicators found not in compliance will have twenty (20) days to produce the required certificates of completion for courses previously attended prior to the initiation of enforcement proceedings. Certified applicators who do not meet the recertification requirements will have their licenses suspended in all deficient categories for one (1) year or until all deficiencies are corrected, and they must then re-qualify by taking the certification examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



## 22 TAC §593.24

The Texas Structural Pest Control Board proposes an amendment to §593.24, concerning Criteria and Evaluation of Continuing Education. Grammatical changes were made to the rule and other language changes were made like "unit" to be consistent with other regulations. The addition of physical address will be an aid to investigators in monitoring presentations. The last change will be for those CEU providers who are not deterred by monetary penalties.

Dale Burnett, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect.

There will be no cost of compliance for small businesses since the rule proposal does not affect them.

There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Mr. Burnett has also determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that

the rule will be that investigators will be able to locate and monitor continuing education classes. The grammatical changes will clarify the rules language. Lastly, the loss of status from being an education provider will insure that licensees are receiving approved training, which can only benefit the public when receiving services. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

No other statute, code or article is affected by this proposal.

### §593.24. *Criteria and Evaluation of Continuing Education.*

(a) The staff shall evaluate continuing education programs, and assign the number of category units for each one. No more than one unit will be assigned for any hour of net actual instruction time. A course may be approved for a maximum of two (2) consecutive years. After a maximum of two (2) years, any previously approved course must have substantial changes in order to qualify for continuing education credit. The staff will consider the learning objectives, technical information given, the accuracy of the information, the relevance of the information to structural pest control, the qualifications of the instructor, and the amount of actual training or self-study time devoted to each program in the process of evaluation. Each continuing education program, including self-study and electronic courses submitted for approval must contain the following:

(1) a copy of handout materials, if any, which will be distributed to participants during the course;

(2) inclusive length of time of the course stated in hours, and minutes except electronic and self-study courses;

(3) date, time, physical address, and city of presentation or examination for self-study courses or electronic courses or if unknown, agreement to provide two (2) weeks notice of each date of presentation or examination;

(4) category(ies) and number of units in which continuing education units are requested;

(5) a detailed course outline which will indicate the scope of the course and learning objectives; and

(6) additional information as requested.

(b) If the speaker, self-study course provider or electronic provider has not been previously approved, the minimum requirements to qualify as a speaker, course presenter, self-study or electronic course provider are:

(1) a degree from a recognized institution of higher learning which pertains to the course being taught; or

(2) five (5) years experience as an applicator certified by the Texas Structural Pest Control Board with a current license in the category to be taught; or

(3) verifiable proof of training and teaching experience within the preceding three (3) years; or

(4) a combination of education, work related training, and teaching experience which, in the opinion of the Board, would be equivalent to two of the three requirements as previously stated.

(c) Any person seeking approval of a training course must submit the information required at least thirty (30) days prior to the first day of presentation or first offering of an electronic or self-study course. The Executive Director may waive this requirement due to special circumstances. The staff must evaluate and recommend credits within thirty (30) days from the date submitted.

(d) Parts of courses, which focus on promotion of products, policies, or procedures of a company, cannot be included for units. Courses and instructors may be re-evaluated at the Board's discretion. Any changes to courses must be submitted to the Board thirty (30) days prior to the date of presentation.

(e) The Executive Director may direct the staff to re-evaluate its approval of a course or speaker under the provisions of subsection (a) and (b) of this section.

(f) The Board may enter into a memorandum of agreement with a state or professional society or association to recognize the state's pesticide applicator recertification of the society's professional applicator recertification or satisfaction of the requirements of this section for commercial and noncommercial applicator recertification only if:

(1) the standards for recertification meet or exceed the standards of the recertification period as set out in this section;

(2) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the Board.

(g) A certified applicator may submit the information required in §593.24(a),(2), (4) and (5) the names of instructors and verification of attendance for any course attended by the certified applicator which was not previously approved within thirty (30) days of attendance of the course. The Board staff will notify the certified applicator of any units awarded.

(h) Each continuing education program, including self-study and electronic courses submitted for approval must be accompanied by the following information on each speaker, self-study course or electronic course:

(1) name, address, telephone number and company, organization, or institution of higher learning affiliation;

(2) a resume which includes, but is not limited to, the following information;

(A) formal education-degrees held and granting institutions;

(B) industry-related technical experience which relates to the subject matter to be taught;

(C) industry-related teaching experience which relates to the subject matter to be taught;

(D) address and telephone number of at least three references;

(E) membership in trade associations and/or professional organizations; and

(F) publications as sole or junior author.

(i) The sponsor's name, physical address and telephone number will accompany each continuing education program submitted for approval.

(j) Each sponsor must [shall] institute a means or system that verifies that participants attended the training program throughout its stated length or completed self-study program. These systems may include, but are not limited to, sign-in-sign-out rosters, course completion

certificates, or the system may be incorporated into the means to verify the participant's comprehension of a subject matter presented. The sponsor or instructor must be alert and actively monitor the participants in the course.

(k) The sponsor must issue a certificate of completion within twenty-one (21) days of course to each applicator completing the course. This document must include at least the following information:

(1) certified applicator name and certified applicator assigned number;

(2) name of sponsor or sponsoring agency, company, or organizations;

(3) number and category of continuing education units awarded;

(4) date and location of training or verification test.

(l) The sponsor must maintain course completion records for two (2) years and a list of participants must be forwarded to the Board within twenty-one (21) days of completion of the training course. List must contain name of sponsor, course title and course number(s), number of units awarded, speaker name and number(s), name of attendee and license number, if applicable.

(m) A non-refundable annual fee is due for each course taken into consideration for approval. Courses may be considered on a two-year [two year] basis if the course presenter submits a fee of \$40.00 for each year at the time of submission. Course will be approved for a maximum of two (2) consecutive years. Governmental agencies are exempt from this fee if the course is presented as a part of the legally mandated function of the agency or main purpose is education.

(n) For purposes of this section, a course is defined as specific instruction in a category presented by any one sponsor, company or organization.

(o) "Sponsor" means the person, company or organization that compiles, organizes, writes and/or produces category specific training courses to be given at a training seminar submitted to the Texas Structural Pest Control Board for approval as continuing education program for recertification units. The sponsor is responsible for establishing procedures for verification of completion and comprehension of its courses, and for awarding course completion certificates. The sponsor must be responsible for the qualifications, competence and performance of the authors, speakers, presenters, or instructors who produce or present its courses, and for performance of self-study course examination.

(p) Videotapes, slides or other media presentations shall not be approved by the Board unless accompanied by a qualified speaker and course outline, as required by subsection (a) and (c) of this section or unless approved as a self-study course under subsection (h) of this section.

(q) Personnel of the Texas Structural Pest Control Board are exempt from any fee charged for a continuing education program if they are monitoring the program as a part of the duties of their employment.

(r) A course may be approved as a self-study or electronic course if it meets the following additional criteria:

(1) attendees must take an examination designed to verify their knowledge of the material provided in the course. The course sponsors must grade the examination and keep records for a minimum of two (2) years.

(2) the attendee's grade on the examination must be at least 70% correct to obtain credit for the course.

(3) the examination for a self-study course must be proctored by the course provider or person responsible to the course provider. The examination location must be made available and accessible to Board staff.

(4) a self-study course examination proctor must be a certified applicator licensed by the Texas Structural Pest Control Board. Anyone serving as an examination proctor may not take a verification exam for credit while serving as a monitor. The Board must be notified to time, physical address, and city two weeks prior to each self-study course examination. The Executive Director may waive this requirement upon written request by the applicant taking the self-study course.

(s) A course may be approved as an electronic course if verified by the responsible certified applicator of the pest control company and/or noncommercial entity.

(t) A self-study course or electronic course is limited to one continuing education unit in the general training or a specific category.

(u) The Executive Director may re-evaluate or cancel a currently approved continuing education course during the calendar year for failure to comply with the elements of the course as outlined in this section.

(v) The penalty for a sponsor or speaker falsifying an application for recertification record can be as much as \$5000. A penalty of \$5000 per incident may be imposed to a sponsor of a continuing education course for the following:

(1) Failure to notify the Board of course presentation as required in subsection (a)(3) of this section.

(2) Failure to submit a list of participants to the Board as required in subsection (l) of this section.

(3) Failure to issue a certificate of completion to each applicator after course completion as required in subsection (k) of this section.

(4) Providing a certificate of attendance to a certified applicator licensee who did not attend and/or complete the course requirements.

(5) Falsely claiming to have conducted a continuing education course.

(6) Failure to conduct a continuing education course for the required unit [length] of time.

(7) Making a sales promotion during the instructional period of the continuing education course.

(w) Any continuing education provider who violates this section can have the provider privileges revoked or suspended.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2005.

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Dale Burnett

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



## TITLE 25. HEALTH SERVICES

## PART 7. TEXAS MEDICAL DISCLOSURE PANEL

### CHAPTER 601. INFORMED CONSENT

#### 25 TAC §§601.2 - 601.5, 601.8

The Texas Medical Disclosure Panel (panel) proposes amendments to §§601.2 - 601.5 and 601.8, concerning informed consent.

#### BACKGROUND AND PURPOSE

These amendments are proposed in accordance with the Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients and to establish the general form and substance of such disclosure. The sections cover procedures requiring full disclosure of specific risks and hazards--list A, procedures requiring no disclosure of specific risks and hazards--list B, disclosure and consent form for medical and surgical procedures, disclosure and consent form for radiation therapy, and disclosure and consent form for hysterectomy.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §601.2 adds procedures and risks and hazards for the cardiovascular system and nervous system treatments and procedures. The proposed amendment to §601.3 removes procedures relating to the nervous system and radiology that the panel proposes be moved to §601.2. The proposed amendments to §§601.4 and 601.5 add a Spanish language version of the disclosure and consent form for medical and surgical procedures, and the disclosure and consent form for radiation therapy. The proposed amendment to §601.8 makes editorial corrections to the disclosure and consent for hysterectomy form and corrects a difference between the English and Spanish language versions of the form.

#### FISCAL NOTE

Cindy Bednar, Manager, Facility Licensing Group, Regulatory Licensing Unit, Department of State Health Services, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bednar has also determined that there are no anticipated economic costs to small businesses, micro-businesses, or to persons who are required to comply with the amendments as proposed because regulated facilities already have an obligation to disclose risks and hazards related to the medical care and surgical procedures. The amendments will not add additional costs. There will be no impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. Bednar has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amended sections will be the assurance that the panel continues to monitor the risks and hazards related to medical care and surgical procedures, which must be disclosed by health care providers or physicians to their patients or persons authorized to

consent for their patients and the general form and substance of such disclosure.

#### REGULATORY ANALYSIS

The panel has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

#### TAKINGS IMPACT ASSESSMENT

The panel has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to the Texas Medical Disclosure Panel, Attention: Cindy Bednar, Manager, Facility Licensing Group, Regulatory Licensing Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6646 or by e-mail to [Cindy.Bednar@dshs.state.tx.us](mailto:Cindy.Bednar@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendments are proposed under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

The amendments affect Texas Civil Practice and Remedies Code, §74.102.

§601.2. *Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A.*

(a) (No change.)

(b) Cardiovascular system. [No procedures are assigned at this time.]

##### (1) Cardiac.

###### (A) Surgical.

###### (i) Coronary artery bypass, valve replacement.

(I) Acute myocardial infarction.

(II) Hemorrhage.

(III) Kidney failure.

(IV) Stroke.

(V) Sudden death.

(VI) Infection of chest wall/chest cavity.

(VII) Valve related delayed onset infection.

###### (ii) Heart transplant.

(I) Infection.

(II) Rejection.

(III) Death.

(B) Non-Surgical--Coronary angioplasty, coronary stent insertion, pacemaker insertion, AICD insertion, and cardioversion.

(i) Acute myocardial infarction.

(ii) Rupture of myocardium.

(iii) Life threatening arrhythmias.

(iv) Necessity for emergency open heart surgery.

(v) Hemorrhage.

(vi) Stroke.

(vii) Sudden death.

(viii) Device related delayed onset infection.

##### (C) Diagnostic.

(i) Cardiac catheterization.

(I) Allergic sensitivity reaction to injected contrast media.

(II) Acute myocardial infarction.

(III) Kidney damage from IV contrast medium.

(IV) Arrhythmias.

(V) Stroke.

(VI) Injury to vessels that may require immediate surgical intervention.

(ii) Electrophysiologic studies.

(I) Cardiac perforation.

(II) Life threatening arrhythmias.

(III) Injury to vessels that may require immediate surgical intervention.

(iii) Stress testing--Acute myocardial infarction.

(iv) Transesophageal echocardiography--Esophageal perforation.

##### (2) Vascular.

(A) Open surgical repair of aortic, subclavian, and iliac, artery aneurysms or occlusions, and renal artery bypass.

(i) Hemorrhage.

(ii) Paraplegia.

(iii) Kidney damage.

(iv) Stroke.

(v) Acute myocardial infarction.

(vi) Infection of graft.

(B) Endovascular stenting of any portion of the aorta, iliac or carotid artery.

(i) Hemorrhage.

(ii) Injury to vessels that may require immediate surgical intervention.

- (iii) Conversion of procedure to open procedure.
- (iv) Failure to deliver stent/endoluminal graft.
- (v) Stent migration.
- (vi) Paraplegia (for thoracic aorta procedures only).
- (vii) Vessel occlusion.
- (viii) Pseudo aneurysm.
- (ix) Irreversible kidney damage.
- (x) Impotence (for abdominal aorta and iliac artery procedures only).

(C) Vascular thrombolysis.

- (i) Hemorrhage.
- (ii) Embolus.
- (iii) Pulmonary complications.
- (iv) Shock.

(c) - (l) (No change.)

(m) Nervous system treatments and procedures.

(1) Craniotomy, craniectomy or cranioplasty [~~(craniectomy)~~ for excision of brain tissue, tumor, vascular malformation and cerebral revascularization].

(A) - (D) (No change.)

(E) Cerebral spinal fluid leak with potential for meningitis and severe headaches.

(F) Meningitis.

(G) Brain abscess.

(2) Cranial nerve operations [~~Craniotomy (craniectomy)~~ for cranial nerve operation including neurectomy, avulsion, rhizotomy or neurolysis].

(A) (No change.)

(B) Recurrence, [or] continuation or worsening of the condition that required this operation.

(C) (No change.)

(D) New or different pain.

(3) Spine operation, including laminectomy, decompression, fusion, internal fixation or procedures for nerve root or spinal cord compression; diagnosis; pain; deformity; mechanical instability; injury; removal of tumor, abscess or hematoma (excluding coccygeal operations).

(A) (No change.)

(B) Impaired muscle function or paralysis.

(C) Incontinence, [or] impotence or impaired bowel function.

(D) (No change.)

(E) Recurrence, [or] continuation or worsening of the condition that required the operation.

(F) (No change.)

(G) Hemorrhage.

(4) Peripheral nerve operation; nerve grafts, decompression, transposition or tumor removal; neuroorrhaphy, neurectomy or neurolysis.

(A) - (B) (No change.)

(C) Recurrence, continuation or worsening [or persistence] of the condition that required the operation.

(D) (No change.)

~~{(5) Correction of cranial deformity.}~~

~~{(A) Loss of brain function.}~~

~~{(B) Seizures.}~~

~~{(C) Recurrence or continuation of the condition that required this operation.}~~

(5) ~~[(6)]~~ Transphenoidal hypophysectomy or other pituitary gland operation.

(A) Spinal fluid leak.

(B) Necessity for hormone replacement.

(C) Recurrence or continuation of the condition that required this operation.

(D) Nasal septal deformity or perforation.

(6) ~~[(7)]~~ Cerebral spinal fluid shunting procedure or revision.

(A) Shunt obstruction, migration or infection.

(B) Seizure disorder.

(C) Recurrence or continuation of brain dysfunction.

(D) Injury to internal organs.

(E) Possible brain injury or hemorrhage.

(n) - (s) (No change.)

*§601.3. Procedures Requiring No Disclosure of Specific Risks and Hazards--List B.*

(a) - (l) (No change.)

(m) Nervous system.

~~{(1) Cranioplasty.}~~

(1) ~~[(2)]~~ Lumbar puncture.

(2) ~~[(3)]~~ Closure of meningomyelocele.

(3) ~~[(4)]~~ Ventriculostomy with or without air ventriculogram.

(4) ~~[(5)]~~ Cisternal puncture (diagnostic).

~~{(6) Craniectomy or craniotomy for intracranial hematoma, abscess or penetrating injury.}~~

(5) ~~[(7)]~~ Stereotactic surgery for dystonia.

(6) ~~[(8)]~~ Insertion of skeletal tongs.

(7) ~~[(9)]~~ Intravenous cut-down.

(8) ~~[(10)]~~ Elevation of depressed skull fracture.

(9) ~~[(11)]~~ Cervical 1-2 puncture (diagnostic).

(n) Radiology.

(1) - (32) (No change.)



~~{(33) Pacemaker lead placement.}~~

(33) ~~[(34)]~~ Arthrography.

(34) ~~[(35)]~~ Percutaneous nephrostogram and/or internal stent ~~[stint]~~ or external drainage of the kidney.

(35) ~~[(36)]~~ Percutaneous transhepatic cholangiogram and/or internal stent ~~[stint]~~ or external drainage of the liver.

(36) ~~[(37)]~~ Percutaneous abscess drainage.

(o) - (p) (No change.)

**§601.4. Disclosure and Consent Form.**

(a) The Texas Medical Disclosure Panel adopts the following form which shall be used by a physician or health care provider to inform a patient or person authorized to consent for the patient of the possible risks and hazards involved in the medical treatments and surgical procedures named in the form. Except for the procedures shown in subsection (b) of this section, the following form shall be used for the medical treatments and surgical procedures described in §601.2 of this title (relating to Procedures Requiring Full Disclosure of Specific Risks and Hazards--List A). Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Department of State Health Services.

[Figure: 25 TAC §601.4(a)]

(1) English form.

Figure: 25 TAC §601.4(a)(1)

(2) Spanish form.

Figure: 25 TAC §601.4(a)(2)

(b) (No change.)

**§601.5. Disclosure and Consent Form for Radiation Therapy.**

The Texas Medical Disclosure Panel adopts the following form to be used by a physician or health care provider to inform a patient or person authorized to consent for a patient of the possible risks and hazards involved in the radiation therapy named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4(a) of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only radiation therapy procedures. If a surgical or anesthetic procedure is required in combination with a radiation therapy procedure, the general disclosure and consent form as adopted in §601.4(a) of this title and the form adopted in this section shall be used. The general disclosure and consent form shall be used for the surgical or anesthetic procedure and the radiation therapy disclosure and consent form shall be used for the radiation therapy procedure. Providers shall have the form available in both English and Spanish language versions. Both versions are available from the Department of State Health Services.

[Figure: 25 TAC §601.5]

(1) English form.

Figure: 25 TAC §601.5(1)

(2) Spanish form.

Figure: 25 TAC §601.5(2)

**§601.8. Disclosure and Consent Form for Hysterectomy.**

The Texas Medical Disclosure Panel adopts the following form which shall be used to provide informed consent to a patient or person authorized to consent for the patient of the possible risks and hazards involved in the hysterectomy surgical procedure named in the form. This form is to be used in lieu of the general disclosure and consent form adopted in §601.4(a) of this title (relating to Disclosure and Consent Form) for disclosure and consent relating to only hysterectomy procedures. Providers are required to use the form to obtain consent for hysterectomies performed at least 90 days following publication of

this adopted section in the *Texas Register*. Providers shall have the form available in both English and Spanish language versions. Both versions are available from the [Texas] Department of State Health Services.

(1) English form.

Figure: 25 TAC §601.8(1)

(2) Spanish form.

Figure: 25 TAC §601.8(2)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501493

Melba W.G. Swafford, M.D.

Chairperson

Texas Medical Disclosure Panel

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 458-7236

**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 65. WILDLIFE**

**SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS**

**31 TAC §§65.101 - 65.104, 65.107, 65.115**

The Texas Parks and Wildlife Department (TPWD or the department) proposes amendments to §§65.101 - 65.104, 65.107, and 65.115, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds. The proposed amendments are intended, where applicable, to function as part of the overall strategy to detect and control Chronic Wasting Disease (CWD) should it occur in Texas.

The emergence of CWD in both captive and free-ranging deer populations in other states and Canada is cause for concern due to the potential threat to wild deer and exotic livestock (i.e. elk) populations in Texas. CWD has been detected in free-ranging ungulates in Colorado, Illinois, Nebraska, New Mexico Wisconsin, and Wyoming, the Canadian provinces of Alberta, Saskatchewan, and Ontario, and is known to have occurred in captive herds in Colorado, Wyoming, Montana, South Dakota, Oklahoma, Kansas, and Nebraska.

The epidemiological nature of CWD is not well understood and has not been extensively studied, but CWD is known to be communicable, incurable, and invariably fatal to the ungulates that contract it. At the current time, there is no live test for CWD; animals suspected of having CWD must be euthanized in order to obtain brain tissue for definitive diagnosis.

The Texas Parks and Wildlife Department regulates the trapping, transporting, and transplanting of deer under what are popularly referred to as the 'Triple T' regulations. Currently, the rules prohibit translocation activities unless a specified sample size of

deer from the trap site has been tested and returned with results of 'not detected.'

The current rules, though helpful, do not adequately address a potentially difficult problem. Although CWD has not been detected in captive or free-ranging herds in Texas, the disease has not yet been exhaustively studied and the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. Therefore it is possible, if CWD exists in the state but has not been detected, that infected or exposed deer potentially could be translocated, creating a vector for dispersal of the disease into additional populations. The risk to the multi-billion dollar hunting and exotic livestock industries represented by even one infected animal among a wild population is considerable. The impact of the discovery of CWD in Texas could be significant. Texas has one of the most extensive white-tailed deer herds in the United States and the quality of animals that come from Texas is known throughout the world. Over one-third of the 4 million white-tailed deer in Texas are found in about 25 per cent of the geographical area of Texas. Over \$600 million is spent by white-tailed deer hunters in rural communities each year, over half of which is spent in the Edwards Plateau, Pineywoods, and South Texas regions. Fully one quarter of this revenue is spent in the Edwards Plateau alone. Therefore, the department must remain vigilant in the face of potential disease threats to the resource.

The Texas Parks and Wildlife Department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and exotic livestock, and to determine the appropriate level of response. The department believes that vigilance and early detection are crucial to minimizing the severity of impacts in the event that CWD is discovered in Texas. The department's efforts (in conjunction with the Texas Animal Health Commission and the regulated community) to establish, maintain, and follow protocols for CWD monitoring were analyzed by an ad hoc group of private-practice veterinarians known as the 'CWD Task Force,' whose recommendations concerning the future direction of the testing regime were presented to the White-tailed Deer Advisory Committee (WTDAC) along with those of the TPWD staff. The proposed rules, where applicable, are a result of this interaction and are intended to minimize the potential for the translocation of diseased deer.

The amendment to §65.101, concerning Definitions, creates definitions for the terms 'permit year' and 'wildlife stocking plans.' A 'permit year' would be defined as the time period from September 1 - August 31 (i.e., the fiscal year). The change is necessary in order to create a constant term of reference for purposes of regulating Triple T trapping activities with respect to trapping activities under a Deer Management Permit. The trapping periods for those two permits are different; by using a single term to describe a timeframe for permitted activities, the department avoids lengthier and potentially confusing regulatory descriptions. The definition of 'wildlife stocking plans' would prescribe the content of stocking plans at the trap site and at the release site. The change is necessary because Parks and Wildlife Code, §43.061, allows permits to be issued 'only if recommended by separate wildlife stocking plans...for the origin and destination of the game animals or game birds.' The current rules stipulate that a stocking plan for a release site is the content of the Wildlife Management Plan prepared for the release site. The department has always understood that because an application for a Triple T permit requires pertinent biological data from the trap site, the application form constituted a stocking plan for the trap site. To be clear, the

department wishes to explicitly establish the application form as the stocking plan for the trap site.

The amendment to §65.102, concerning Limitation of Applicability, renames the section 'Disease Detection Requirements' to make the title more germane in light of the changes introduced by the amendment. The current rule was first promulgated in 2002 in response to the appearance of CWD in other states, specifically because CWD was being detected in areas that were a highly significant distance from other known infected herds, which indicated that agents other than natural dispersion were likely involved (e.g., trapping and transplanting operations). As testing has progressed, the department is confident that certain liberalizations can be effected without diminishing the department's ability to detect CWD. The proposed amendment would allow a property that has had at least 60 'not detected' results and no 'detected' results to be exempt from the requirement of testing a minimum of 10% of deer to be trapped, provided deer on the property continue to be tested at a rate of one deer or 3% of the total deer moved per year, whichever is higher. The amendment is necessary to create a distinction between properties that have no testing history or a statistically insignificant testing history from those with statistically valid, non-problematic testing histories. From an epidemiological standpoint, the probability of detecting disease on a property monitored at the level contemplated by the rule (60 deer, 1 deer or 3% annually thereafter) is high and therefore acceptable in terms of risk management scenarios. The amendment also would exempt properties from testing requirements if the proposed translocation activities consisted solely of the relocation of deer to or within a contiguous property owned by the same person. The amendment is necessary to acknowledge that testing is academic when it comes to pasture-to-pasture relocations, since natural disease-dispersion phenomena are just as likely as introduced disease phenomena to occur in such populations.

The proposed amendment to §65.103, concerning Trap, Transplant, and Transplant Permit, consists of several actions. The proposed amendment would eliminate the contents of current subsection (a), which are relocated to §65.101, concerning Definitions. The proposed amendment also would eliminate the current provisions concerning the so-called 'inconsequential release' (releases of deer without a site inspection at a one-time or cumulative ratio of less than one deer to 200 acres). The 'inconsequential release' was originally implemented as a way to reduce workload on staff and to allow land managers with minor trapping and relocation needs to avoid having to wait for staff to perform a site inspection. However, the practice has been determined by the department to be capable of violating the department's stocking policy. The stocking policy (31 TAC Chapter 52) requires that wildlife be translocated into suitable natural habitat capable of sustaining the animals. The presumption of the 'inconsequential release' was that one additional deer on 200 acres is superfluous. In analyzing the impacts of 'inconsequential release,' the department has determined that repeated releases at the same site or multiple releases in areas with fragmented habitat can result in deer finding their way to the only available natural habitat in numbers that the habitat cannot sustain. Therefore, the amendment is necessary to prevent a conflict with the department's stocking policy. The WTDAC has concurred and recommends that the practice be terminated. The proposed amendment also would prohibit the trapping of deer on properties where deer have been released under a Deer Management Permit (DMP) within the same permit year. The current rules do not allow for the release of deer from DMP pens until

April 1, after the Triple T season has ended. The rationale for the prohibition was to prevent the sale of DMP deer under the guise of Triple T activities. The amendment, in concert with proposed amendment to the DMP rules (which appear elsewhere in this issue), would allow deer on a DMP property to be trapped and transplanted only if the operation occurred prior to any DMP liberations in the same year.

The proposed amendment to §65.104, concerning Trap, Transport, and Process Surplus White-tailed Deer Permit, would change the title of the section in the interests of readability. The proposed amendment also would increase from 18 hours to 20 hours the time allowed between trapping and transporting activities. The change is necessary to respond to requests from municipalities using the permit. The current period of 18 hours is considered to be not enough time in some cases for trapping activities to be concluded before transport activities are required to begin.

The proposed amendment to §65.107, concerning Permit Applications and Processing, would modify the current provisions by replacing the word 'appeal' with the word 'review' and by slightly altering the process as it is currently described. The department believes that 'review' is a more accurate descriptor of the process contemplated by the rule; the term 'appeal' has judicial connotations and the department does not wish to give the impression that the process is a judicial process. The amendment also streamlines the process by removing the requirement that requestors for review begin the process by contacting the immediate in-line supervisor of the employee who denied the issuance of a permit. The department has determined that this is an unnecessary step because the in-line supervisor will as a matter of practice be consulted prior to permit denial. Therefore, the review process should be initiated at the senior manager level. The amendment also removes the provision that allows a denial by the panel of senior department managers to then be referred to the Private Lands Advisory Board or the Hunting Advisory Board for determination of the need for regulatory revision. The Hunting Advisory Board no longer exists, and the Private Lands Advisory Board is an entity that is not designed for advising on matters of permit issuance. Instead, the amendment will require that a summary of all reviews be presented annually to the WTDAC, which is a more appropriate advisory vehicle for such matters. The amendment is necessary to implement the recommendations of the WTDAC.

The proposed amendment to §65.115, concerning Notification, Recordkeeping, and Reporting Requirements, would reduce the minimum notification time for the commencement of trapping activities from 24 hours to 12 hours. Permittees have informed the department that in some cases the 24-hour requirement has led to the disruption of trapping activities because deer move out of the trapping area before the required 24 hours has passed.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the amendments as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the amended sections.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the amendments as proposed will be the availability of flexible management opportunities for landowners and land managers, which will biologically benefit the resources the department is

charged with protecting and, ultimately, their enjoyment by the people of this state.

There will be no adverse economic effect on small businesses, micro-businesses, or persons required to comply with the amendments as proposed. The proposed amendments do not impose any fees in addition to those already required, and compliance with the amendments as proposed would not require any additional investment in equipment, infrastructure, or recordkeeping materials or systems.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the amendments as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 43, Subchapter E.

#### *§65.101. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) - (6) (No change.)

(7) Permit year--September 1 of any year to August 31 of the following year.

(8) ~~[(7)]~~ Processing facility--The specific destination of white-tailed deer trapped and transported pursuant to a permit to trap, transport, and process surplus white-tailed deer where deer will be processed for consumption.

(9) ~~[(8)]~~ Recruitment--The Fall survey estimate of the number of fawns (any deer less than one year of age) on a property.

(10) ~~[(9)]~~ Release Site--The specific destination of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

(11) ~~[(10)]~~ Stocking Policy--The policy governing stocking activities made or authorized by the department as specified in §§52.101 - 52.105, 52.201, 52.202, 52.301 and 52.401 of this title (relating to Stocking Policy).

(12) ~~[(11)]~~ Supervisory permittee--A person who supervises the activities of permittees authorized to conduct activities.

(13) ~~[(12)]~~ Trap Site--The specific source of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

(14) Wildlife Stocking Plans--The stocking plan for a:

(A) trap site consists of the biological information about the trap site required by the department on the application for a permit under this subchapter; and

(B) release site is the same as that required for a wildlife management plan under the provisions of §65.25 of this title (relating to Wildlife Management Plan).

*§65.102. Disease Detection Requirements [Limitation of Applicability].*

(a) Except as provided in subsections (b) and (e) of this section [Until this section is repealed], no permits to trap, transport, and transplant white-tailed deer or mule deer shall be issued by the department unless a sample of adult deer from the trap site equivalent to 10% of the number of deer to be transported has been tested for chronic wasting disease by the Texas Veterinary Medical Diagnostic Laboratories.

(1) - (8) (No change.)

(b) The provisions of subsection (a) of this section do not apply to a property if:

(1) there have been at least 60 CWD-IHC (immunohistochemistry) test results of 'not detected' received by the department for the property; and

(2) there have been no results of 'detected' received by the department for the property.

(c) A property meeting the conditions of subsection (b) of this section continues to qualify for exemption from the provisions of subsection (a) of this section if all samples from the property continue to test 'not detected' on an annual basis. The minimum requirement for satisfying the provisions of this subsection is one deer per year or at least 3% of the number of deer moved from the property each calendar year, whichever is higher.

(d) The provisions of subsection (a) of this section automatically apply to any property that receives deer from a trap site that does not meet the requirements of subsections (b) and (c) of this section.

(e) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

(f) [(b)] Nothing in this section authorizes the take of deer. The take of deer for the purposes of this section shall be in accordance with applicable laws and regulations.

(g) [(e)] This section does not apply to deer possessed pursuant to a permit to trap, transport, and process white-tailed deer.

*§65.103. Trap, Transport, and Transplant Permit.*

(a) [For the purposes of this subchapter, the content of a wildlife stocking plan for a release site shall be the same as that required for a wildlife management plan under the provisions of §65.25 of this title (relating to Wildlife Management Plan).] Applications may be approved without an inspection, provided[:]

[(1) the release will not exceed a ratio of one white-tailed deer per 200 acres at the release site; however, when the accumulated releases on a tract result in a ratio of one deer to 200 acres (counting released deer only); no further releases shall take place unless a site inspection has been performed by the department; or]

[(2)] the property has been issued Level II or Level III MLD Permits during the year of the release, the landowner furnishes a minimum of three years of population data and two years of harvest data, and is in compliance with all requirements of the wildlife management plan for the property; and

(1) [(A)] the number of deer to be trapped (in addition to the number of deer harvested) does not exceed the population reduction specified in the wildlife management plan for the trap site; and

(2) [(B)] the number of deer to be released does not cause the total population of deer on the release site to exceed the total population size specified in a management plan under the provisions of §65.25 of this title.

(b) - (g) (No change.)

(h) No permit shall be issued for any trapping activity on a property or portion of a property if deer held under a Deer Management Permit have been released on the property or portion of the property in the same permit year.

*§65.104. Permit to Trap, Transport, and Process Surplus White-tailed Deer [Permit].*

(a) - (c) (No change.)

(d) The permittee is responsible for establishing an acceptable schedule for delivery of deer with the processing facility. However, transport of live, trapped deer shall begin within 20 [±8] hours of trapping.

(e) - (f) (No change.)

*§65.107. Permit Applications and Processing.*

(a) (No change.)

(b) Review [Appeals]. An applicant for a permit under this subchapter may request a review of a decision [appeal the decisions] of the department to deny issuance of the [concerning the stipulations of a] permit. [All appeals involving the provisions of paragraphs (1) and (2) of this subsection shall be resolved within 10 working days of notification of the department by the person making the appeal.]

(1) An applicant seeking review of a decision [to appeal the decisions] of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial [immediate in-line supervisor of the TPW employee responsible for authorizing the permitted activities].

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) [(2)] The request for review shall be presented to a review panel [If the determination of the immediate in-line supervisor is unsatisfactory to the applicant, the applicant is entitled to have the appeal presented to an appeals panel. The decision of the appeals panel is final]. The review [appeals] panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director and District Leader with jurisdiction; [and]

(C) [the White-tailed Deer Program Leader and] the Big Game Program Director; and[-]

(D) the White-tailed Deer or Mule Deer program leader, as appropriate.

(4) [(3)] The decision of the review panel is final. [If the determination of the panel is unsatisfactory to the applicant, the applicant is entitled to have the appeal presented to the Private Lands Advisory Board and the Hunting Advisory Board for the purpose of determining if regulatory revision is appropriate.]

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

(c) (No change.)

*§65.115. Notification, Recordkeeping, and Reporting Requirements.*

(a) No person shall trap, transport, or release a game animal or game bird under a permit authorized by this subchapter unless that person has notified the department not less than 12 [24] hours nor more than 48 hours prior to each instance of trapping, transportation, or release. Notification shall be by fax or telephone contact with the Law Enforcement Communications Center in Austin, and shall consist of:

(1) - (2) (No change.)

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



## SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

### 31 TAC §§65.131, 65.133, 65.135, 65.136, 65.138

The Texas Parks and Wildlife Department proposes amendments to §§65.131, 65.133, 65.135, 65.136, and 65.138, concerning Deer Management Permits. The amendments are recommended by the department's White-tailed Deer Advisory Committee (WTDAC).

The proposed amendment to §65.131, concerning Deer Management Permit (DMP), would create a review process for department decisions concerning the issuance of Deer Management Permits. The intent of the proposed amendment is to create a process to allow persons who have been denied issuance of permits to have the decision reviewed by a panel of senior TPWD managers. The process as proposed would allow the department to reverse such decisions upon further review, and would require the department to report annually to the WTDAC on the number and disposition of reviews. The amendment is necessary to implement the recommendations of the WTDAC.

The proposed amendment to §65.133, concerning General Provisions, would allow deer possessed under a "Triple T" permit (Trap, Transport, and Transplant permit) to be released into a DMP pen, provided the property on which the DMP pen is located meets the all requirements for release privileges stipulated in Chapter 65, Subchapter C. The current rules allow DMP holders to temporarily trap and detain wild white-tailed deer on the property for which the permit was issued; the proposed amendment would expand the rule's application to include deer trapped at locations other than that for which the DMP was issued. The department's rationale for the change is that since the intent behind the DMP permit is to allow the temporary detention of wild deer, it doesn't matter if the deer came from the ranch for which

the permit was issued or another location, provided that the release of the deer would not be inconsistent with either the recommendations of the WMP for the property or the department's stocking policy. The amendment is necessary to implement the recommendations of the WTDAC.

The proposed amendment to §65.135, concerning Detention and Marking of Deer, eliminates the requirement that DMP deer be released no later than 10 months following capture. The amendment is necessary because the department seeks to simplify the rules; other portions of this rulemaking simply would require deer to be released by August 31 of each year. The amendment also would eliminate the provision requiring DMP deer to be marked with yellow paint and replaces it with an ear-tag requirement. The change is necessary because the use of paint to mark deer proved to be ineffectual, and the WTDAC recommended a return to a more traditional method of marking deer.

The proposed amendment to §65.136, concerning Release, would eliminate the prohibition on the release of deer between September 1 and April 1 and replace it with a requirement that deer be released before August 31 each year. The original requirement was intended to prevent the release of deer immediately prior to deer season. The amendment preserves that intent, but simplifies it. The amendment also would require permittees to remove all externally provided food and water from a DMP pen at the time deer are released, ensuring that when the fencing of a pen is removed there is no inducement for the deer within the pen to remain. The amendment is necessary to implement a recommendation of the WTDAC.

The proposed amendment to §65.138, concerning Violations and Penalties, would allow the department to refuse permit issuance to an applicant who has been finally convicted of or received deferred adjudication for a violation of the Parks and Wildlife Code within three years of application for a permit, and would automatically prohibit the issuance of a DMP permit for a period of three years to any person who has been finally convicted of or received deferred adjudication for a violation of §65.136, which governs the release of DMP deer. The amendment also provides for the denial of a permit if the department determines that the applicant is acting on behalf of or as a surrogate for another person who would not qualify for permit issuance because of a conviction of or deferred adjudication for a violation of the Parks and Wildlife Code. The amendment is necessary to introduce a credible deterrent to unscrupulous conduct.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the availability of flexible management opportunities for landowners and land managers, which will biologically benefit the resources the department is charged with protecting and, ultimately, their enjoyment by the people of this state.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. The proposed rules do not impose any fees in addition to those already required, and compliance would not require any additional investment in equipment, infrastructure,

or recordkeeping materials or systems other than the cost of ear tags, which the department has determined to be a negligible expense.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which provides the Commission with authority to establish conditions for permits issued under the subchapter.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

*§65.131. Deer Management Permit (DMP).*

(a) The department may issue a Deer Management Permit to a person who has met the requirements of §65.132 of this title (relating to Permit Application and Fees).

(b) A person who possesses a valid Deer Management Permit may trap and detain wild deer according to the provisions of this subchapter and Parks and Wildlife Code, Chapter 43, Subchapter R. A permittee shall abide by the terms of an approved deer management plan.

(c) The provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, and L do not apply to deer lawfully being held in possession under authority of a valid DMP.

(d) Changes to an approved Deer Management Plan shall be considered as a new application.

(e) An applicant for a permit under this subchapter may request that a decision by the department to deny issuance of the permit be reviewed.

(1) An applicant seeking review of a decision of the department under this subsection shall contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for a review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

- (A) the Director of the Wildlife Division;
- (B) the Regional Director with jurisdiction;
- (C) the Big Game Program Director; and
- (D) the White-tailed Deer Program Leader.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

*§65.133. General Provisions.*

(a) Deer detained under a DMP shall not be commingled with deer held under any other license or permit, except as provided under this subchapter.

(b) Except as provided in subsection (c) of this section, any deer introduced into a pen containing deer detained under a DMP become wild deer and must be released according to the provisions of §65.136 of this title (relating to Release).

(c) If approved under the deer management plan, buck deer held under the provisions of Subchapter T of this chapter (relating to Scientific Breeder's Permit) may be introduced into a pen containing deer detained under a DMP. Such deer remain private property and may be recaptured; however, any such deer within the pen when wild deer are released under the provisions of §65.136 of this title (relating to Release) become wild deer.

(d) If approved under the deer management plan, deer held under the provisions of Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds) may be released into a pen containing deer detained under a DMP; however, at the time of release from the DMP pen the property for which the DMP has been issued must meet the release-site requirements established in Subchapter C of this chapter.

(e) ~~[(4)]~~ The holder of a DMP is entitled to the issuance of Managed Lands Deer Permits subject to the provisions of §65.26 of this title (relating to Managed Lands Deer (MLD) Permits).

(f) ~~[(e)]~~ A DMP authorizes the permittee to detain deer for natural breeding only.

(g) ~~[(f)]~~ No deer, parts of deer, or by-products of any deer held under a DMP may be sold, bartered, or traded for any consideration.

*§65.135. Detention and Marking of Deer.*

(a) No trapping of deer under a DMP may take place between March 2 and August 31 of any year.

~~[(b) All deer detained under a DMP shall be released by no later than ten months following capture, unless the detention is approved by the department in the applicant's management plan.]~~

(b) [(e)] Each [AH] deer detained under a DMP shall be marked by securely attaching a tag constructed of durable material to one ear. The tag must be of a size and color that is clearly visible from a distance of 50 feet. For the purposes of this subsection, 'durable material' means material that is not likely to disintegrate, decompose, or be easily dislodged or removed [; at a minimum, by a continuous stripe of yellow, acrylic, water-based paint no less than three inches wide along the spine from the shoulders to the tail, or as approved by the department in the applicant's deer management plan].

*§65.136. Release.*

(a) Release of deer shall be effected by removing, for a continuous distance of no less than 100 yards, those components of a pen that serve to maintain deer in a state of detention within the pen. Such components shall be removed for no fewer than 60 consecutive days. The provisions of this subsection may be altered, provided the specific details of the release technique are included in the applicant's deer management plan and are approved by the department.

(b) All externally provided food and water (i.e., food or water that does not naturally occur at the site) shall be removed or made inaccessible to deer for no fewer than 60 days.

(c) [(b)] All deer within a DMP pen shall be released on or before August 31 of each year [No deer held under a DMP shall be released between September 1 and April 1, unless such release is approved by the department in the applicant's management plan].

§65.138. *Violations and Penalties.*

(a) A person who violates any provision of this subchapter commits an offense and is subject to the penalties prescribed by Parks and Wildlife Code, Chapter 43, Subchapter R.

(b) The department reserves the right to refuse permit issuance to any person receiving deferred adjudication for or finally convicted of a violation of the Parks and Wildlife Code within the three years immediately preceding an application for a DMP.

(c) A person who receives deferred adjudication for or is finally convicted of a violation involving §65.136 of this title (relating to Release) is prohibited from obtaining a DMP for as period of three years from the date the conviction is obtained or the terms of the deferred adjudication have been satisfied.

(d) The department may refuse to issue a permit to a person for a prospective DMP property if the department has reason to believe that the person is acting on behalf of or as a surrogate for another person who is unable to qualify for permit issuance under subsections (b) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

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## SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

### 31 TAC §§65.602, 65.609 - 65.611

The Texas Parks and Wildlife Department proposes amendments to §§65.602, and 65.609 - 65.611, concerning Scientific Breeder's Permits. The effect of the proposed amendments would be to prohibit the importation of white-tailed or mule deer into the state. The amendments are recommended by the department's White-tailed Deer Advisory Committee (WTDAC) as a measure to protect native deer herds from the potential threat of Chronic Wasting Disease (CWD). The emergence of CWD in both captive and free-ranging deer populations in other states and Canada is cause for concern due to the potential threat to wild deer and livestock populations in Texas. CWD has been detected in free-ranging ungulates in Colorado, Illinois, Nebraska, New Mexico Wisconsin, and Wyoming, the Canadian provinces of Alberta, Saskatchewan, and Ontario, and is known to have occurred in captive herds in Colorado, Wyoming, Montana, South Dakota, Oklahoma, Kansas, and Nebraska.

The epidemiological nature of CWD is not well understood and has not been extensively studied, but CWD is known to be communicable, incurable, and invariably fatal to the ungulates that contract it. At the current time, there is no live test for CWD; animals suspected of having CWD must be euthanized in order to obtain brain tissue for definitive diagnosis.

Texas Parks and Wildlife regulates the importation of white-tailed and mule deer under the provisions of Scientific Breeder Permit

regulations. Currently, the rules require any deer released to the wild to either meet the entry requirements established by the Texas Animal Health Commission for cervidae or be released directly from a facility enrolled in a herd health certification plan. The current rules, though helpful, do not adequately address a potentially difficult problem. Since CWD has not yet been exhaustively studied, the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. Therefore, it is possible that infected or exposed deer could be unknowingly imported into Texas, where they could then possibly infect wild deer or domestic stock. Since deer imported into Texas are frequently liberated for hunting purposes (1,397 in 2001), the risk to the multi-billion dollar hunting and livestock industries represented by even one infected animal among a wild population is considerable.

The Texas Parks and Wildlife Department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and livestock, and to determine the appropriate level of response. The department strongly believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the suspension of importation of deer, pending resolution of the epidemiological uncertainty surrounding imported deer, is a wise and responsible course of action. The proposed rules are intended, first, to prevent the importation of potentially diseased deer, and second, to provide a bulwark against undetected infection, which by the time it is noticed in clinical manifestations among wild populations, could cause incalculable harm.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, removes the requirement that deer released to the wild meet the entry requirements established by the Texas Animal Health Commission. The language is being removed because entry requirements are unnecessary if importation is prohibited.

The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, restricts the purchase of deer to in-state sources only and stipulates that transport privileges under a purchase permit do not apply to deer from out of state sources. The amendment is necessary to suspend the importation of deer until the epidemiological realities of deer diseases in other states are fully understood and deer in this state can be presumed to be safe from infection.

The amendment to §65.610, concerning Transport of Deer and Transport Permit, stipulates that a purchase permit will not be issued for deer being obtained from an out-of-state source and adds language to clarify that a transport permit is valid for the transport of deer in-state only. The amendment is necessary to suspend the importation of deer until the epidemiological realities of deer diseases in other states are fully understood and deer in this state can be presumed to be safe from infection.

The amendment to §65.611, concerning Prohibited Acts, would make it an offense for any person to possess a deer obtained from an out-of-state source, except for deer obtained prior to the effective date of the rulemaking. The amendment is considered necessary to serve the long-term goal of minimizing the risk of disease transmission to wild populations of deer from deer possessed under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are

in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules.

Mr. Macdonald has also determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of wild, native deer from communicable diseases introduced by deer imported into this state, thus ensuring the public of continued enjoyment of the resource. Additionally, the protection of native deer herds will have the simultaneous collateral benefit of protecting captive herds, maintaining the economic viability of deer breeding operations.

There will be no direct adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. The preponderance of deer breeding operations in the state qualify as small businesses or microbusinesses. On the sale side, the economic effect of the proposed rules on such entities generally is expected to be positive, as the value of breeder deer currently in possession can be expected to increase by virtue of the fact that they would become the only lawful source of deer for deer breeding operations. On the purchase side, there is a conceivable adverse impact because out-of-state sources for deer will be prohibited. The department is unable to quantify those costs at this time, as the selling price of deer is generally not advertised or publicly disclosed, and is not mandated by reporting requirements of any department regulations. However, department records indicate transactions involving 18,413 deer in Texas since December of 2002, and only 46 of those deer were imported; thus, the adverse economic impact, direct or indirect, is believed to be minimal.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

The proposed new rule and amendments affect Parks and Wildlife Code, Chapter 43.

*§65.602. Permit Requirement and Permit Privileges.*

(a) No person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) A person who possesses a valid scientific breeder's permit may:

(1) possess deer within the permitted facility for the purpose of propagation;

(2) engage in the business of breeding legally possessed deer within the facility for which the permit was issued;

(3) sell deer that are in the legal possession of the permittee;

(4) release deer from a permitted facility into the wild as provided in this subchapter;

(5) recapture lawfully possessed deer that have been marked in accordance §65.607 of this title (relating to Marking of Deer) that have escaped from a permitted facility;

(6) temporarily relocate and hold deer in accordance with the provisions of §65.610(a)(2) and (3) of this title (relating to Transport of Deer and Transport Permit) for breeding or nursing purposes; and

(7) temporarily relocate and recapture buck deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).

(c) No person may release a deer obtained or possessed under this subchapter to the wild unless the person can prove that the deer[~~;~~]

[~~(1)~~] came directly from a facility enrolled in a current, valid herd health plan for cervidae approved by Texas Animal Health Commission[~~;~~ ~~or~~]

[~~(2)~~ meets the entry requirements established by 4 TAC §51.10 (relating to Cervidae)].

*§65.609. Purchase of Deer and Purchase Permit.*

(a) Deer may be purchased or obtained for:

(1) holding for propagation purposes if the purchaser possesses a valid scientific breeder's permit; or

(2) liberation for stocking purposes.

(b) Deer may be purchased or obtained only from[~~;~~]

[~~(1)~~] the holder of a valid scientific breeder's permit[~~;~~ ~~or~~]

[~~(2)~~ a lawful out-of-state source].

(c) An individual may possess or obtain deer only after a purchase permit has been issued by the department. A purchase permit is valid for a period of 30 days after it has been completed (to include the unique number of each deer being transferred), dated, signed, and faxed to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The purchase permit shall also be signed and dated by the buyer or buyer's agent prior to or at the time that the transfer of possession of any deer occurs.

(d) A purchase permit is valid for only one transaction and expires after one instance of use.

(e) A one-time, 30-day extension of effectiveness for a purchase permit may be obtained by notifying the department prior to the original expiration date of the purchase permit.

(f) A person may amend a purchase permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(g) The department may issue a purchase permit for liberation for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.



(h) Deer lawfully purchased or obtained for stocking purposes may be temporarily held in captivity:

- (1) to acclimate the deer to habitat conditions at the release site;
- (2) when specifically authorized by the department;
- (3) for a period to be specified on the purchase permit, not to exceed six months;
- (4) if they are not hunted prior to liberation; and
- (5) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility.

(i) No person may sell deer to another person unless either the purchaser or the seller possesses a purchase permit valid for that specific transaction.

*§65.610. Transport of Deer and Transport Permit.*

(a) The holder of a valid scientific breeder's permit may, without any additional permit, transport legally possessed deer:

- (1) to another scientific breeder when a valid purchase permit has been issued for that transaction;
- (2) to another scientific breeder on a temporary basis for breeding purposes. The scientific breeder providing the deer shall complete and sign a free, department-supplied invoice prior to transporting any deer, which invoice shall accompany all deer to the receiving facility. The scientific breeder receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held in the receiving facility. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the scientific breeder relinquishing the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title (relating to Annual Reports and Records). In the event that a deer has not been returned to a facility at the time the annual report is due, a scientific breeder shall submit a photocopy of the incomplete original invoice with the annual report. A photocopy of the completed original invoice shall then be submitted as part of the permittee's annual report for the following year.
- (3) to another person on a temporary basis for nursing purposes, provided the deer do not leave this state. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a nursery, which invoice shall accompany all deer to the receiving facility. The person receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the originating facility, the invoice shall be dated and signed by both the person holding the deer and the scientific breeder returning the deer to the originating facility, and the invoice shall accompany the deer to the original facility. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.
- (4) to an individual who does not possess a scientific breeder's permit if a valid purchase permit for release into the wild for stocking purposes has been issued for that transaction;

(5) to and from an accredited veterinarian for the purpose of obtaining medical attention, provided the deer do not leave this state; and

(6) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis. The scientific breeder shall complete and sign a free, department-supplied invoice prior to transporting deer to a DMP facility, which invoice shall accompany all deer to the receiving facility. The DMP permittee or authorized agent receiving the deer shall sign and date the invoice upon receiving the deer, and shall maintain a copy of the invoice during the time the deer are held by that person. At such time as the deer are to return to the facility of origin, the invoice shall be dated and signed by both the person holding the deer under a DMP permit and the scientific breeder, and the invoice shall accompany the deer to the facility of origin. A photocopy of the original of the invoice shall be submitted to the department with the annual report required by §65.608 of this title.

(b) The department may issue a transport permit to an individual who does not possess a scientific breeder's permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder ~~[or lawful out-of-state source]~~. A transport permit does not authorize and is not valid for the transport of deer into this state from any other state or country.

(c) Except as provided in this subchapter, no person may transport deer during any open season for deer or during the period beginning 10 days immediately prior to an open season for deer unless the person notifies the department by contacting the Law Enforcement Communications Center in Austin no less than 24 hours before actual transport occurs.

(d) During an open season for deer or during the period beginning 10 days immediately prior to an open season for deer, deer may be transported for the purposes of this subchapter without prior notification of the department; however, deer transported under this subsection shall be transported only from one scientific breeder facility to another scientific breeder facility. Deer transported under this subsection shall not be liberated unless the scientific breeder holding the deer notifies the Law Enforcement Communications Center no less than 24 hours prior to liberation.

(e) Transport permits shall be effective for 30 days from the date that the scientific breeder has completed (to include the unique number of each deer being transported), dated, signed, and faxed the permit to the Law Enforcement Communications Center in Austin prior to the transport of any deer. The transport permit shall also be signed and dated by the other party to a transaction (or their authorized agent) upon the transfer of possession of any deer.

(f) A transport permit is valid for only one transaction, and expires after one instance of use.

(g) A person may amend a transport permit at any time prior to the transport of deer; however:

(1) the amended permit shall reflect all changes to the required information submitted as part of the original permit;

(2) the amended permit information shall be reported by phone to the Law Enforcement Communications Center in Austin at the time of the amendment; and

(3) the amended permit information shall be faxed to the Law Enforcement Communications Center in Austin within 48 hours of transport.

(h) A one-time, 30-day extension of effectiveness for a transport permit may be obtained by notifying the department prior to the original expiration date of the transport permit.

(i) No person may possess, transport, or cause the transportation of deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

*§65.611. Prohibited Acts.*

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C, E, or R shall not be commingled with deer held in a permitted scientific breeder facility.

(b) A person commits an offense if that person places or holds deer in captivity at any place or on any property other than property for which a scientific breeder's permit, or a permit authorized under other provisions of this title or Parks and Wildlife Code, is issued, except that a permittee may transport and temporarily hold deer at another location for breeding, nursing, or veterinary purposes as provided in this subchapter.

(c) No live deer taken from the wild may be possessed under a scientific breeder's permit or held in a scientific breeder's facility.

(d) No deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(e) Possession of a scientific breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(f) No scientific breeder shall hunt or kill, or allow the hunting or killing of deer held pursuant to this subchapter.

(g) No scientific breeder shall exceed the number of deer allowable for the permitted facility, as specified by the department on the scientific breeder's permit.

(h) No person may sell deer to another person unless either the purchaser or the seller possesses a purchase permit valid for that specific transaction.

(i) Except as provided in this subsection, no person may possess a deer acquired from an out-of-state source. This subsection does not apply to deer lawfully obtained prior to the effective date of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775

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**TITLE 34. PUBLIC FINANCE**

**PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

**CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)**

**SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL**

**34 TAC §5.43**

The Comptroller of Public Accounts proposes new §5.43, concerning payments for accrued vacation time. A brief description of the new section follows.

Subsection (a) defines important terms used throughout the section.

Subsection (b) specifies the meaning of "continuous state employment." State law states that a state employee who separates from state employment must have accrued six months of "continuous state employment" before the employee is entitled to be paid for the employee's accrued vacation time.

Subsection (c) specifies the meaning of "separation from state employment." State law states that a state employee is entitled to be paid for the employee's accrued vacation time only if the employee has separated from state employment.

Subsection (d) specifies which state agency is responsible for paying a state employee for the employee's accrued vacation time.

Subsection (e) specifies the method for determining how many hours of accrued vacation time must be paid to a state employee. Subsection (e)(1) requires the employee's time to be allocated over the workdays following the effective time of the employee's separation from state employment until the balance is allocated completely. Subsection (e)(2) specifies what happens when a holiday is incurred during the allocation period. Subsection (e)(2) makes it clear that the inclusion of a workday in the allocation does not cause any individual to be a state employee on that workday for any purpose.

Subsection (f) specifies the method for computing the amount of a payment for accrued vacation time. Subsection (f)(1) covers when vacation time is allocated over only one month. Subsection (f)(2) covers when vacation time is allocated over more than one month.

Subsection (g) specifies the method for determining the applicable rate of compensation when computing the amount of a payment for accrued vacation time. Subsection (g)(1) lists the items that must be included when determining the rate. Subsection (g)(2) covers employees who are not hourly. Subsection (g)(3) covers employees with contracts to work fewer than twelve months each fiscal year.

Subsection (h) covers a state employee's remaining on the payroll to exhaust the employee's accrued vacation time balance instead of the employee being paid for that time in a lump sum.

Subsection (i) specifies the data that must be included in the payroll detail submitted to the comptroller to make a payment for accrued vacation time.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no foreseeable implications relating to costs or revenues of the state or local governments.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting the rule will be helping administer payments to state employees for their accrued vacation time. The rule would not have an adverse effect on small businesses or micro-businesses. There is no significant anticipated economic cost to individuals who are required to comply with the rule.

Comments on the proposal may be addressed to Joani Bishop, Manager, Claims Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The new section is proposed under Government Code, §661.068 and §661.094, which authorize the comptroller to adopt rules to administer payments for accrued vacation time.

The new section implements Government Code, Chapter 661, Subchapters C and D.

§5.43. Payments for Accrued Vacation Time.

(a) Definitions. In this section:

(1) "Calendar month" means the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) "Community college" has the meaning assigned to "public junior college."

(3) "Comptroller" means the Comptroller of Public Accounts for the State of Texas.

(4) "Fiscal year" means the accounting period beginning on September 1st and ending the following August 31st.

(5) "Institution of higher education" has the meaning assigned by Education Code, §61.003, except that the term does not include a community college or a public junior college.

(6) "National holiday" has the meaning assigned by Government Code, §661.061(1).

(7) "Public junior college" has the meaning assigned by Education Code, §61.003.

(8) "State agency" means a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of Texas state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes the State Bar of Texas, the Board of Law Examiners, and an institution of higher education. The term does not include a community college or a public junior college.

(9) "State employee" has the meaning assigned by Government Code, §661.061(2).

(10) "State holiday" has the meaning assigned by Government Code, §661.061(3).

(11) "Temporary state employee" means a state employee who is hired to provide services to a state agency for a limited time. The term includes a seasonal employee. The term does not include:

(A) an independent contractor; or

(B) an employee or independent contractor of an independent contractor.

(12) "Workday" means any day except Saturday and Sunday. The term includes a state or national holiday.

(b) Meaning of "continuous state employment." For purposes of determining whether a state employee is entitled to be paid for the accrued balance of the employee's vacation time upon separation from state employment, the employee has "continuous state employment" so long as employment with the state is not interrupted by a period when the employee is not being paid a regular state salary. The period when the employee is on leave without pay or leave of absence without pay is not an interruption that requires the period of continuous state employment to begin again. A leave period that covers one or more entire calendar months, however, does not count toward fulfilling the six month requirement in Government Code, §661.062(a).

(c) Meaning of "separation from state employment." For purposes of determining whether a state employee is entitled to be paid for the accrued balance of the employee's vacation time, "separation from state employment" includes:

(1) a resignation or dismissal from state employment;

(2) a circumstance listed in Government Code, §661.062(b)(2) - (5) or §661.091(a); or

(3) a state employee leaving one state agency to begin working for another state agency, if at least one workday occurs between the two employments.

(d) Responsibility for making the payment. The state agency that employed a state employee at the time of the employee's separation from state employment is responsible for paying the accrued balance of the employee's vacation time. This responsibility exists even if the employee at that time held a position that did not accrue vacation time.

(e) Hours of accrued vacation time to be paid.

(1) Allocation of accrued time. Except as provided in paragraph (2)(D)(ii) of this subsection, the accrued balance of a state employee's vacation time must be allocated over the workdays following the effective time of the employee's separation from state employment until the balance is allocated completely.

(A) If the employee, at the effective time of separation, was normally scheduled to work at least 40 hours each week, then each workday consists of eight hours.

(B) If the employee, at the effective time of separation, was normally scheduled to work fewer than 40 hours each week, then each workday consists of 20% of the number of hours the employee was normally scheduled to work each week.

(2) Addition for holidays encountered during the allocation.

(A) This subparagraph applies to a state employee who, on the effective date of separation from state employment, was normally scheduled to work at least 40 hours each week. Except as provided in subparagraph (C) or (D)(i) of this paragraph, eight hours must be added to the accrued balance of the employee's vacation time for each state or national holiday that occurs during the period over which the balance is allocated.

(B) This subparagraph applies to a state employee who, on the effective date of separation from state employment, was normally scheduled to work fewer than 40 hours each week. Except as provided in subparagraph (C) or (D)(i) of this paragraph, a specified number of hours must be added to the accrued balance of the employee's vacation time for each state or national holiday that occurs during the period over which the balance is allocated. The number of hours added for each holiday is equal to the product of:

(i) eight hours; and

(ii) the percentage of 40 hours that the employee was normally scheduled to work each week on the effective date.

(C) This subparagraph applies to a state employee who is entitled to receive a payment under this subsection because the employee moves or transfers to a position that does not accrue vacation time. No hours may be added to the accrued balance of the employee's vacation time for a state or national holiday that occurs during the period over which the balance is allocated.

(D) This subparagraph applies to a state employee who is entitled to be paid for a state or national holiday that occurs after the effective time of the employee's separation from state employment.

(i) No hours may be added to the accrued balance of the employee's vacation time for that holiday.

(ii) The holiday is ignored when allocating the accrued balance of the employee's vacation time over the workdays following the effective time of the employee's separation from state employment.

(3) Individuals not state employees during the allocation period. The inclusion of a workday in the allocation of the accrued balance of vacation time does not cause any individual to be a state employee on that workday for any purpose.

(f) Computation of the payment.

(1) Accrued balances allocated over only one month. If the accrued balance of a state employee's vacation time is allocated over only one month, then the amount of the payment for that balance is equal to the product of:

(A) the number of hours of the balance; and

(B) the applicable rate of compensation of the employee, which must be expressed as an hourly rate for that month.

(2) Accrued balances allocated over more than one month. If the accrued balance of a state employee's vacation time is allocated over more than one month, then the amount of the payment for that balance is equal to the sum of the amounts attributed to each month included in the allocation. The amount attributed to any particular month is equal to the product of:

(A) the number of hours of the balance that is allocated to that month; and

(B) the applicable rate of compensation of the employee, which must be expressed as an hourly rate for that month.

(g) Applicable rate of compensation.

(1) Items included in the rate of compensation. For purposes of determining the amount of a payment under this section, a state employee's rate of compensation includes base pay plus any emolument or stipend provided as a salary supplement. A special item of compensation, e.g., housing, utilities, clothing, and cleaning, may be included in the rate only if the item was provided in lieu of base

pay. Longevity pay, hazardous duty pay, and benefit replacement pay may not be included in the rate.

(2) Employees who are not hourly. This paragraph applies only to a state employee who was not an hourly employee at the effective time of the employee's separation from state employment.

(A) The employee's rate of compensation must be expressed as an hourly rate for each month or part of a month included in the allocation of the accrued balance of vacation time.

(B) This subparagraph applies only if the state agency making a payment under this section is not an institution of higher education. The hourly rate of compensation for a particular month is equal to a quotient:

(i) the numerator of which is equal to the rate of compensation for the month; and

(ii) the denominator of which is equal to eight multiplied by the number of workdays during the month.

(C) This subparagraph applies only if the state agency making a payment under this section is an institution of higher education. The institution may calculate the hourly rate of compensation for a particular month under the method described in subparagraph (B) of this paragraph. If the institution determines not to use that method, then the hourly rate of compensation for a particular month is equal to a quotient:

(i) the numerator of which is equal to the rate of compensation, expressed as an annual rate; and

(ii) the denominator of which is 2080.

(3) Employees with contracts to work fewer than twelve months each fiscal year. This paragraph applies to a state employee who, on the effective date of the employee's separation from state employment, was normally scheduled to work for a state agency fewer than twelve months during a fiscal year but who agreed for the agency to pay the compensation earned during that work period over twelve months. The employee's applicable rate of compensation must be based on the amount of compensation earned each month the employee worked, not on the amount of compensation paid to the employee each month of the year.

(h) Remaining on the payroll to exhaust the accrued balance of vacation time. A state agency that is liable for a payment under this section and the state employee who is entitled to receive the payment may mutually agree for the employee to remain on the agency's payroll to exhaust the accrued balance of the employee's vacation time instead of paying the employee for the balance. The payment must occur if either party does not agree.

(i) Payroll details. The payroll detail submitted to the controller to make a payment under this section must include:

(1) the employee's rate of pay at the effective time of separation from state employment;

(2) the effective time of separation from state employment; and

(3) the number of days and hours of the accrued balance of the employee's vacation time, not including hours for authorized national and state holidays.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501486  
Martin Cherry  
Chief Deputy General Counsel  
Comptroller of Public Accounts  
Earliest possible date of adoption: May 22, 2005  
For further information, please call: (512) 475-0387



### 34 TAC §5.44

The Comptroller of Public Accounts proposes new §5.44, concerning payments for accrued vacation and sick leave to the estates of deceased state employees. A brief description of the new section follows.

Subsection (a) defines important terms used throughout the section.

Subsection (b) specifies the meaning of "continuous state employment." State law states that a deceased state employee must have accrued six months of "continuous state employment" before the employee's estate is entitled to be paid for the employee's accrued vacation and sick leave.

Subsection (c) specifies which state agency is responsible for paying a state employee's estate for the employee's accrued vacation and sick leave.

Subsection (d) specifies the method for determining how many hours of accrued vacation and sick leave must be paid to a state employee's estate. Subsection (d)(1) requires the employee's leave to be allocated over the workdays following the time of the employee's death until the balance is allocated completely. Subsection (d)(2) specifies what happens when a holiday is incurred during the allocation period. Subsection (d)(3) makes it clear that the inclusion of a workday in the allocation does not cause any individual to be a state employee on that workday for any purpose.

Subsection (e) specifies the method for computing the amount of a payment for accrued vacation and sick leave. Subsection (e)(1) covers when the leave is allocated over only one month. Subsection (e)(2) covers when the leave is allocated over more than one month.

Subsection (f) specifies the method for determining the applicable rate of compensation when computing the amount of a payment for accrued vacation and sick leave. Subsection (f)(1) lists the items that must be included when determining the rate. Subsection (f)(2) covers employees who were not hourly. Subsection (f)(3) covers employees who had contracts to work fewer than twelve months each fiscal year.

Subsection (g) specifies the data that must be included in the payroll detail submitted to the comptroller to make a payment for accrued vacation and sick leave.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no foreseeable implications relating to costs or revenues of the state or local governments.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting the rule will be helping administer payments for the accrued vacation and sick leave of deceased state employees. The rule would not have an adverse effect on small

businesses or micro-businesses. There is no significant anticipated economic cost to individuals who are required to comply with the rule.

Comments on the proposal may be addressed to Joani Bishop, Manager, Claims Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The new section is proposed under Government Code, §661.038, which authorizes the comptroller to adopt rules to administer payments for accrued vacation and sick leave.

The new section implements Government Code, Chapter 661, Subchapter B.

#### §5.44. Payments for Accrued Vacation and Sick Leave to the Estates of Deceased State Employees.

##### (a) Definitions. In this section:

(1) "Calendar month" means the first day through the last day of January, February, March, April, May, June, July, August, September, October, November, or December.

(2) "Community college" has the meaning assigned to public junior college.

(3) "Comptroller" means the Comptroller of Public Accounts for the State of Texas.

(4) "Fiscal year" means the accounting period beginning on September 1st and ending the following August 31st.

(5) "Institution of higher education" has the meaning assigned by Education Code, §61.003, except that the term does not include a community college or a public junior college.

(6) "National holiday" has the meaning assigned by Government Code, §661.031(1).

(7) "Public junior college" has the meaning assigned by Education Code, §61.003.

(8) "State agency" means a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of Texas state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes the State Bar of Texas, the Board of Law Examiners, and an institution of higher education. The term does not include a community college or a public junior college.

(9) "State employee" has the meaning assigned by Government Code, §661.031(2).

(10) "State holiday" has the meaning assigned by Government Code, §661.031(3).

(11) "Temporary state employee" means a state employee who is hired to provide services to a state agency for a limited time. The term includes a seasonal employee. The term does not include:

(A) an independent contractor; or

(B) an employee or independent contractor of an independent contractor.

(12) "Total leave balance" means the sum of:

(A) the accrued balance of a deceased state employee's vacation leave; and

(B) the lesser of:

(i) half of the accrued balance of the employee's sick leave; or

(ii) 336 hours of sick leave.

(13) "Workday" means any day except Saturday and Sunday. The term includes a state or national holiday.

(b) Meaning of "continuous state employment." For purposes of determining whether the estate of a deceased state employee is entitled to be paid for the employee's total leave balance, the employee had "continuous state employment" so long as employment with the state was not interrupted by a period when the employee was not being paid a regular state salary. The period when the employee was on leave without pay or leave of absence without pay was not an interruption that required the period of continuous state employment to begin again. A leave period that covered one or more entire calendar months, however, did not count toward fulfilling the six month requirement in Government Code, §661.032(a).

(c) Responsibility for making the payment. The state agency that employed a state employee at the time of the employee's death is responsible for paying the employee's estate for the employee's total leave balance. This responsibility exists even if the employee at that time held a position that did not accrue vacation leave or sick leave, or both.

(d) Hours of total leave balance to be paid.

(1) Allocation of total leave balance. A deceased state employee's total leave balance must be allocated over the workdays following the date of the employee's death until the balance is allocated completely.

(A) If the employee, at the time of death, was normally scheduled to work at least 40 hours each week, then each workday consists of eight hours.

(B) If the employee, at the time of death, was normally scheduled to work fewer than 40 hours each week, then each workday consists of 20% of the number of hours the employee was normally scheduled to work each week.

(2) Addition for holidays encountered during the allocation.

(A) This subparagraph applies to a state employee who, at the time of death, was normally scheduled to work at least 40 hours each week. Eight hours must be added to the employee's total leave balance for each state or national holiday that occurs during the period over which the balance is allocated.

(B) This subparagraph applies to a state employee who, at the time of death, was normally scheduled to work fewer than 40 hours each week. A specified number of hours must be added to the employee's total leave balance for each state or national holiday that occurs during the period over which the balance is allocated. The number of hours added for each holiday is equal to the product of:

(i) eight hours; and

(ii) the percentage of 40 hours that the employee was normally scheduled to work each week at the time of death.

(3) Individuals not state employees during the allocation period. The inclusion of a workday in the allocation of a total leave

balance does not result in any individual being a state employee on that workday for any purpose.

(e) Computation of the payment.

(1) Total leave balance allocated over only one month. If a deceased state employee's total leave balance is allocated over only one month, then the amount of the payment for that balance is equal to the product of:

(A) the number of hours of the balance; and

(B) the applicable rate of compensation of the employee, which must be expressed as an hourly rate for that month.

(2) Total leave balance allocated over more than one month. If a deceased state employee's total leave balance is allocated over more than one month, then the amount of the payment for that balance is equal to the sum of the amounts attributed to each month included in the allocation. The amount attributed to any particular month is equal to the product of:

(A) the number of hours of the total leave balance that is allocated to that month; and

(B) the applicable rate of compensation of the employee, which must be expressed as an hourly rate for that month.

(f) Applicable rate of compensation.

(1) Items included in the rate of compensation. For purposes of determining the amount of a payment under this section, a deceased state employee's rate of compensation includes base pay plus any emolument or stipend provided as a salary supplement. A special item of compensation, e.g., housing, utilities, clothing, and cleaning, may be included in the rate only if it was provided in lieu of base pay. Longevity pay, hazardous duty pay, and benefit replacement pay may not be included in the rate.

(2) Employees who were not hourly. This paragraph applies only to a state employee who was not an hourly employee at the time of death.

(A) The employee's rate of compensation must be expressed as an hourly rate for each month or part of a month included in the allocation of the employee's total leave balance.

(B) This subparagraph applies only if the state agency making a payment under this section is not an institution of higher education. The hourly rate of compensation for a particular month is equal to a quotient:

(i) the numerator of which is equal to the rate of compensation for the month; and

(ii) the denominator of which is equal to eight multiplied by the number of workdays during the month.

(C) This subparagraph applies only if the state agency making a payment under this section is an institution of higher education. The institution may calculate the hourly rate of compensation for a particular month under the method described in subparagraph (B) of this paragraph. If the institution determines not to use that method, then the hourly rate of compensation for a particular month is equal to a quotient:

(i) the numerator of which is equal to the rate of compensation, expressed as an annual rate; and

(ii) the denominator of which is 2080.

(3) Employees who had contracts to work fewer than twelve months each fiscal year. This paragraph applies to a state

employee who, at the time of death, was normally scheduled to work for a state agency fewer than twelve months during a fiscal year but who agreed for the agency to pay the compensation earned during that work period over twelve months. The employee's applicable rate of compensation must be based on the amount of compensation earned each month the employee worked, not on the amount of compensation paid to the employee each month of the year.

(g) Payroll details. The payroll detail submitted to the comptroller to make a payment under this section must include:

- (1) the employee's rate of pay at the time of death;
- (2) the date of death;
- (3) the number of days and hours of the employee's accrued vacation leave balance, not including hours for authorized national and state holidays; and
- (4) the number of days and hours of the employee's accrued sick leave balance, which must be the number before the application of the 336 hour limit on the number of hours of sick leave that may be paid.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501487

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 22, 2005

For further information, please call: (512) 475-0387



## PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

#### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

##### 34 TAC §41.5

The Teacher Retirement System of Texas (TRS) proposes amendments to §41.5, relating to payment of contributions in the Texas Public School Retired Employees Group Benefits Program known as TRS-Care. The amendments reflect changes to the related statutes found in Chapter 1575 of the Insurance Code. Before the changes in Chapter 1575 were made regarding the payment of retiree contributions for optional coverage in TRS-Care, retirees were considered enrolled in the free basic coverage unless they waived it. The "free basic coverage" was, and still is, considered the TRS-Care 1 plan for the retiree (or survivor) only. Accordingly, if a retiree, surviving spouse, or surviving child (each referred to as a "participant"), upon first becoming eligible to enroll in TRS-Care, neither elected an optional coverage (TRS-Care 2/TRS-Care 3 and/or dependent coverage) nor waived all TRS-Care coverage, they were considered enrolled in the TRS-Care 1 plan by "default."

The statute and rules have required that the participant can authorize TRS to deduct TRS-Care premiums from the retirement annuity, but if the annuity is insufficient to cover the entire TRS-Care premium, then the entire amount of the premium is billed directly to the participant on a monthly payment basis. Historically, if the participant failed to make premium payments after a certain period following notice of delinquency, TRS downgraded the coverage to the automatic "free basic coverage" (i.e., TRS-Care 1 with no dependent coverage).

The most recent changes to Chapter 1575 require that the participant either elect a TRS-Care plan or waive it; however, if the participant does neither, the participant is no longer automatically enrolled in the free basic coverage. Therefore, the issue arose as to what consequences should follow if a participant fails to make premium payments after a certain period following notice of delinquency. The purpose of the substantive amendments is to encourage the payment of premiums without unduly penalizing a participant who fails to do so timely.

The proposed amendments do not change the existing provision in the rule that downgrades a retiree's coverage to TRS-Care 1 without dependent coverage if the retiree fails to make premium payments after due notice of delinquency has been provided. The proposed amendments provide that, once downgraded, the former optional coverage may not be restored, except if the participant subsequently becomes eligible for the age 65 additional enrollment opportunity or a second initial enrollment opportunity due to aging into the TRS-Care Rule of 80. The proposed amendments would also allow rather than require TRS to deduct the premium payment from the participant's annuity. In addition, the proposed amendments would make non-substantive changes to clarify the rule.

Tony Galaviz, Chief Financial Officer, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as amended. There is no foreseeable effect on local employment or local economies as a result of the proposed amendments.

Mr. Galaviz has also determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of the amendments will be that participants will have notice of their rights and obligations concerning their premium payments and the results of failing to pay. Additionally, the rule will be consistent with the change in applicable law. There is no anticipated adverse economic effect on small businesses or micro-businesses as a result of compliance with the proposed amendments. Mr. Galaviz has determined that there are no anticipated economic costs to persons required to comply with the proposed amendments for each year of the first five years the proposal will be in effect.

Comments on the proposal may be submitted to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701.

These amendments are proposed under Insurance Code §1575.052, which gives TRS the authority to adopt rules as necessary to administer and to operate the TRS-Care program. The amendments are also proposed under Government Code §825.102, which authorizes the Board of Trustees of the Teacher Retirement System to adopt rules for the administration of the funds of the retirement system and for the transaction of business of the Board.

There are no other codes affected.

§41.5. *Payment of Contributions.*

(a) Retirees, surviving spouses, and surviving dependent children or their representative (collectively, "participants") shall pay monthly contributions as set by the trustee for their and their dependents' participation in TRS-Care [to cover the cost of optional plans].

~~[(b) Surviving spouses shall pay monthly contributions to cover the cost of insurance for the surviving spouse.]~~

~~[(c) Retirees and surviving spouses shall pay monthly contributions to cover the cost of insuring dependents.]~~

~~[(d) Surviving dependent children, or their representative, shall pay monthly contributions to cover the cost of insurance for the surviving dependent children.]~~

(b) [(e)] To [In order to] be eligible for TRS-Care [optional] coverage, a participant [retiree, surviving spouse, or surviving dependent child, or his or her representative,] must authorize the trustee in writing to deduct [the deduction by the trustee of the amount of] the contribution amount [contributions] from the [their] annuity payment. After such authorization, the trustee may [shall] deduct the amount of the contribution [each month] from the annuity payment.

~~[(f) In order to pay for dependent coverage, the retiree or surviving spouse shall authorize in writing the deduction of the contribution payment from their annuity payment. After authorization by the retiree or surviving spouse, the trustee shall deduct the amount of the contribution each month from the retiree's or surviving spouse annuity payment.]~~

(c) [(g)] If [In the event that] the amount of the contribution is more than the amount of the annuity payment, the participant will be billed directly by TRS or the TRS-Care administrator [the carrier] for the entire contribution amount.

(d) [(h)] Failure to make any required contribution for coverage of a dependent or a surviving dependent child [non-retiree] will

result in termination of coverage at the end of the month for which the last contribution was made.

(e) [(i)] Failure to make any required contribution for coverage of a retiree or surviving spouse enrolled in TRS-Care 2 or TRS-Care 3 [under an optional plan] will result in termination of coverage from TRS-Care 2 or TRS-Care 3, as applicable [from the optional plan] and enrollment in TRS-Care 1 [the basic plan], resulting in a decrease in coverage[.] at the end of the month for which the last contribution was made. The retiree or surviving spouse will not be able to change his or her TRS-Care coverage tier unless and until the retiree or surviving spouse has an additional enrollment opportunity as set out in §41.2 of this chapter relating to Additional Enrollment Opportunity or a second initial enrollment opportunity as set out in §41.1 of this chapter relating to Enrollment Periods for the Texas Public School Retired Employees Group Benefits Program (TRS-Care).

~~[(j) Disability retirees shall be required to pay monthly contributions to cover the cost of coverage during periods when their annuity payments are suspended. Failure to make required contributions will result in a termination of coverage from the optional plan and enrollment in the basic plan, resulting in a decrease in coverage.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501483

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Proposed date of adoption: June 9, 2005

For further information, please call: (512) 542-6438

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 2. TEXAS STATE BOARD OF BARBER EXAMINERS

#### CHAPTER 51. PRACTICE AND PROCEDURE SUBCHAPTER C. EXAMINATION AND LICENSING

##### 22 TAC §51.77

The Texas State Board of Barber Examiners withdraws the proposed amendment to §51.77 which appeared in the October 29, 2004, issue of the *Texas Register* (29 TexReg 9967).

Filed with the Office of the Secretary of State on April 8, 2005.

TRD-200501474

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Effective date: April 8, 2005

For further information, please call: (512) 936-6333



#### SUBCHAPTER D. BARBER SHOPS

##### 22 TAC §51.97

The Texas State Board of Barber Examiners withdraws the proposed amendment to §51.97 which appeared in the October 29, 2004, issue of the *Texas Register* (29 TexReg 9968).

Filed with the Office of the Secretary of State on April 8, 2005.

TRD-200501475

Glenn D. Parker

Executive Director

Texas State Board of Barber Examiners

Effective date: April 8, 2005

For further information, please call: (512) 936-6333



## TITLE 25. HEALTH SERVICES

### PART 7. TEXAS MEDICAL DISCLOSURE PANEL

## CHAPTER 601. INFORMED CONSENT

### 25 TAC §601.2, §601.3

The Texas Medical Disclosure Panel withdraws the proposed amendments to §601.2 and §601.3 which appeared in the February 4, 2005, issue of the *Texas Register* (30 TexReg 460).

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501492

Melba W.G. Swafford, M.D.

Chairperson

Texas Medical Disclosure Panel

Effective date: April 11, 2005

For further information, please call: (512) 458-7236



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

##### SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

##### 34 TAC §41.5

The Teacher Retirement System of Texas (TRS) has withdrawn from consideration the proposed amendments to §41.5 which appeared in the November 12, 2004, issue of the *Texas Register* (29 TexReg 10463).

Filed with the Office of the Secretary of State on April 7, 2005.

TRD-200501464

Ronnie Jung

Executive Director

Teacher Retirement System of Texas

Effective date: April 7, 2005

For further information, please call: (512) 542-6438



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 2. TEXAS ETHICS COMMISSION

#### CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

##### SUBCHAPTER J. REPORTS BY A CANDIDATE FOR STATE OR COUNTY PARTY CHAIR

###### 1 TAC §20.579

The Texas Ethics Commission adopts an amendment to §20.579, requiring candidates for county chair to file pre-election reports only if they are opposed. The amendment is adopted without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 451) and will not be republished.

The amendment also allows a candidate for county chair to select the modified reporting option. The modified reporting option allows a candidate to avoid the requirement to file pre-election reports if the candidate does not accept contributions or make political expenditures (other than expenditures for a filing fee) of more than \$500 in the election.

No comments were received regarding adoption of this amendment.

This amendment is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2005.

TRD-200501433

David A. Reisman

Executive Director

Texas Ethics Commission

Effective date: April 25, 2005

Proposal publication date: February 4, 2005

For further information, please call: (512) 463-5800



### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. MEDICAID REIMBURSEMENT RATES

##### SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

###### 1 TAC §355.312

The Texas Health and Human Services Commission (HHSC) adopts amended rule §355.312, concerning reimbursement setting methodology--liability insurance costs, in its Medicaid Reimbursement Rates chapter. The purpose of the amendment is to identify the requirements that nursing facilities with independently procured insurance and captive insurance must follow to provide proof of payment of taxes and to outline the actions that HHSC will take if proof of payment is not received. In addition, the amendment specifies who must sign the affidavit for independently procured insurance and captive insurance. The amendment also updates terminology and clarifies the section. The amended rule is adopted with changes to the proposed text published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10669).

The amendment requires evidence that taxes were paid to and received by the Texas Comptroller on the premiums of independently procured insurance or captive insurance. Evidence must be provided to HHSC Rate Analysis by a specified date following the applicable calendar year. The liability insurance add-on payment is discontinued if it is not received by that date and any add-on payments made for the period taxes are unpaid will be recouped if evidence is not received within 60 days of the original deadline. Once HHSC receives proof of paid taxes any add-on payments that were withheld or recouped will be restored for that period. A vendor hold remains in place until all evidence is received.

HHSC received several comments from the Texas Health Care Association regarding the proposed rule during the comment period.

Comment: Concerning the takings impact assessment under Chapter 2007 of the Government Code, a nursing facility's contract with the department for furnishing nursing home services to Medicaid recipients constitutes a vested property right under *Texas Department of Human Services v. Silver Threads Co.*, 569SW2d 49 (Tex. Civ. App. - Austin 1978 writ ref'd n. rec.).

Response: The takings impact assessment under Chapter 2007 of the Government Code relates specifically to government actions affecting private *real property* interests (emphasis added). HHSC does not agree that a nursing facility's contract property right requires a takings impact assessment of this rule change under Chapter 2007.

Comment: Concerning §355.312(c)(4), risk retention groups chartered in the state of Texas does not register with the Texas Department of Insurance (TDI) and therefore TDI will not designate them as registered. It is recommended that the paragraph should read as follows, "A risk retention group that is chartered in Texas or that is registered with the TDI which is designated as "registered" on the TDI website."

Response: Risk retention groups chartered outside Texas must register with TDI and risk retention groups chartered inside Texas must be licensed as an insurance company in the state of Texas and have the designation of "active" with TDI. Changes were made to this paragraph and to paragraph (c)(1) to clarify that risk retention groups chartered inside Texas must be licensed in Texas as insurance companies.

Comment: Concerning §355.312(d) and (e), instead of determining that the information supplied is correct and complete, HHSC Rate Analysis should simply need to check that the insured entities listed on the affidavit are contracted providers and that the signatory is authorized by Department of Aging and Disability Services Form 2031.

Response: No proposed changes were made to the referenced language of these subsections. The intent of these subsections is to allow for a review by HHSC of the affidavit and any supporting documentation to determine if the document(s) are correct and complete before payment was authorized. It is up to HHSC to determine the extent of the review of the document(s) prior to authorization of payment. HHSC is adopting these subsections without change.

Comment: Concerning §355.312(d) and (e), the proposed amended rule should require only that the provider prove payment by submitting a copy of the return filed with the Comptroller and the words "received by" should be deleted. The rule should state that sufficient evidence of payment and receipt is a copy of the return that the provider filed with the Comptroller.

Response: A copy of the tax return filed with the Comptroller does not constitute evidence that the insurance tax was paid to and received by the Comptroller. HHSC is adopting these subsections without change.

Comment: Concerning §355.312(f), this subsection should read, "A determination by HHSC that the insurance purchased by the contracted provider does not qualify for the purchased general and/or professional liability insurance add on payment rate is subject to administrative appeal in accordance with the procedures set out in 1 TAC §355.110 and the contracted provider may appeal any final adverse ruling to Travis County District Court. In the event of a provider timely appeals the determining by HHSC, HHSC will not stop payment of the add on until the outcome of the appeal has been determined in favor of HHSC's position."

Response: As specified in §355.312(f), the Texas Department of Insurance (TDI), and not the Health and Human Services Commission (HHSC), determines if insurance is unauthorized under Chapter 101 of the Texas Insurance Code. Appeals of the determination by TDI that the insurance is unauthorized must be filed with TDI in accordance with the procedures identified by TDI. Once a determination has been made by TDI that the insurance purchased by the provider is unauthorized and TDI notifies HHSC in writing of their determination, the insurance add-on rate will be stopped. Providers will be notified in writing that their insurance add-on payments are being stopped and that they may appeal the termination of payments to HHSC under 1 Texas Administrative Code §357.481 through §357.490. Language has

been added to §355.312(f) to specify the add-on payments that were stopped will be paid to the provider if the insurance is later determined to be authorized. In addition, language has been added to specify that the provider will be notified in writing by certified mail of the stoppage of the add-on payment and of their appeal rights with HHSC.

Comment: Concerning §355.312(d) and (e), although it does not seem inappropriate that the outgoing owner should remain responsible for providing payment of premium taxes and thus defending the propriety of the insurance add on the owner has already received, financial security arrangements already recognized as appropriate to secure audit of cost reports should be extended to include any such amounts.

Response: Currently for any cost reports required by an outgoing owner as a result of an ownership change, the outgoing owner's vendor payments are placed on hold until an acceptable cost report has been received and reviewed by HHSC Rate Analysis and/or the Office of Inspector General, as appropriate. The vendor hold is employed to ensure that the required proof of taxes paid by the outgoing owner is received by HHSC as required for receipt of the add-on rate. HHSC is adopting these subsections without change.

This amendment is adopted under the Texas Government Code, §531.033, which provides the Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The adopted amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§355.312. Reimbursement Setting Methodology--Liability Insurance Costs.*

(a) Definitions.

(1) Purchased commercial liability insurance--Either general or professional liability insurance from a commercial carrier or a non-profit service corporation in an arm's-length transaction that provides for the shifting of risk to the unrelated party. The commercial carrier or non-profit service corporation must meet the requirements as set by the Texas Department of Insurance (TDI) for authorized insurance.

(2) Self-insurance--Self-insurance is a means whereby a contracted provider undertakes the risk to protect itself against anticipated liabilities by providing funds equivalent to liquidate those liabilities. If a contracted provider enters into an arrangement with an unrelated party that does not provide for the shifting of risk to the unrelated party, such an agreement shall be considered self-insurance. Self-insurance is not purchased liability insurance.

(3) Independently procured insurance--an insurance transaction involving an insurance contract independently procured from an insurance company not licensed in Texas through negotiations occurring entirely outside the state of Texas that is reported and on which premium tax is paid.

(4) Purchased captive insurance--A company providing either general or professional liability insurance purchased from a nonadmitted captive insurance company that insures solely directors and officer's liability insurance for the directors and officers of the company's

parent and affiliated companies and/or the risks of the company's parent and affiliated companies.

(b) Payment rates for purchased general and professional liability insurance will be determined as follows:

(1) Determine the portion of the general/administration rate component from 1 TAC §355.307 (relating to Reimbursement Setting Methodology) attributable to allowable liability insurance costs.

(2) Determine the amount of total dollars that would be expended if the liability rate component from paragraph (1) of this subsection were paid uniformly to all providers during the rate effective period.

(3) Estimate the number of days of service that will be covered by purchased liability insurance during the rate period.

(4) Divide the total dollars available for liability insurance from paragraph (2) of this subsection by the estimated number of days of service that will be covered by purchased liability insurance during the rate period from paragraph (3) of this subsection. Estimate the proportion of this per diem amount accruing from general liability insurance and the proportion accruing from professional liability insurance to determine the payment rate for each day of purchased general liability insurance and the payment rate for each day of purchased professional liability insurance.

(5) Payment rates for purchased general and professional liability insurance may be adjusted as often as HHSC determines is necessary to ensure that the total dollars expended during the rate period do not exceed the amount appropriated for this purpose.

(6) Since these payment rates are determined through an allocation of available appropriations among estimated units of service covered by purchased liability insurance, a public rate hearing is not required when adjustments are made to the payment rates.

(7) Contracted providers will be notified, in a manner determined by HHSC, of adjustments to the payment rates for purchased general and professional liability insurance.

(8) Contracted providers who purchase general liability insurance without professional liability insurance are only eligible to receive payment of the rate for purchased general liability insurance. Contracted providers who purchase professional liability insurance without general liability insurance are only eligible to receive payment of the rate for purchased professional liability insurance. Contracted providers who purchase both general and professional liability insurance are eligible to receive payment of both rates.

(c) Purchased liability insurance issued through entities meeting any one of the following criteria will be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance as appropriate. These entities have been determined by the TDI to be authorized to issue liability insurance policies in the State of Texas.

(1) An insurance company identified as an admitted, licensed, insurer authorized to write liability insurance in Texas. This type of insurance company is designated as "active" on the TDI website. This includes risk retention groups chartered inside the state of Texas.

(2) An insurance company that is an eligible surplus lines insurer which requires that there be a Texas licensed surplus lines agent placing the coverage with the insurance company. This type of insurance company is designated as "eligible" on the TDI website.

(3) The Texas Medical Liability Insurance Underwriting Association (JUA). This insurance arrangement is designated as "active" on the TDI website.

(4) A risk retention group chartered outside the state of Texas that is registered with the TDI and which is designated as "registered" on the TDI website.

(d) Independently procured insurance will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. To qualify for the purchased general and/or professional liability insurance payment rates, the coverage must have been purchased through an independently procured insurance arrangement. The liability insurance payment rates will not be paid to any nursing facility contracted provider until HHSC Rate Analysis has received from the contracted provider a signed and notarized affidavit in the form provided by HHSC regarding the circumstances of the solicitation and procurement of coverage. An authorized signatory for the contracted provider as per the Department of Aging and Disability Services (DADS) Form 2031 must sign the affidavit. HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. Upon receipt and review of the affidavit and supporting information and a determination that the information is correct and complete to authorize payments, payments will be made as identified in subsection (h) of this section. HHSC may refer any questionable case to the TDI to determine if a violation of the Texas Insurance Code has occurred. The liability insurance payment rates will continue to be paid if evidence that taxes on the premiums of independently procured insurance were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed. Evidence of the annual taxes paid to and received by the Texas Comptroller for the independently procured insurance in which the policy has been procured, continued or renewed must be received by HHSC Rate Analysis no later than the end of the business day on June 15 following the applicable calendar year. Failure to provide HHSC by June 15 with evidence that premium taxes have been paid will result in the discontinuation of the liability insurance rate add-on. If June 15 falls on a weekend, a national holiday, or a state holiday, then the first business day following June 15 of that year is the due date for the evidence of taxes paid. If acceptable evidence that taxes have been paid has not been received by HHSC within 60 days after the June 15 deadline, HHSC will recoup any add-on payments made to the contracted provider for the period in which taxes are unpaid. Once HHSC Rate Analysis receives evidence of taxes paid to the Texas Comptroller, HHSC will restore any add-on payments for that period previously withheld or recouped. Any vendor held placed under 40 TAC §19.2308 (relating to Change of Ownership) will remain in place until evidence that all taxes on the premiums are paid to and received by the Texas Comptroller for all time periods for which the liability insurance add-on rate was paid to the contracted provider.

(e) Insurance purchased through a captive insurance company will not be determined automatically to qualify for the payment rates for purchased general and/or professional liability insurance. The liability insurance payment rates will not be paid to any nursing facility contracted provider until HHSC Rate Analysis has received from the contracted provider a signed and notarized affidavit in the form provided by HHSC and any requested supporting information regarding the financial arrangements and affiliation between the contracted provider and the captive insurance company. An authorized signatory for the contracted provider as per DADS Form 2031 must sign the affidavit. HHSC may request additional information to support the contents of the affidavit. The affidavit and supporting information will

be reviewed by HHSC to determine if the information supplied is correct and complete to authorize payment of rates for purchased general and/or professional liability insurance. Payments will be made as identified in subsection (h) of this section. Insurance purchased through an "active" or "eligible" insurance company will automatically qualify for the payment rate for purchased general and/or professional liability insurance, regardless of whether such risk has been reinsured by a captive insurance company. It is the responsibility of the nursing facility to obtain any requested information from the captive insurance company or affiliates. HHSC may refer any questionable cases to TDI to determine if a violation of the Texas Insurance Code has occurred. The liability insurance payment rates will continue to be paid if evidence that taxes on the premiums of captive insurance were paid to and received by the Texas Comptroller for the calendar year in which the policy is procured, continued or renewed. Evidence of the annual taxes paid to and received by the Texas Comptroller for the captive insurance in which the policy has been procured, continued or renewed must be received by HHSC Rate Analysis no later than the end of the business day on April 1 following the applicable calendar year. Failure to provide HHSC by June 15 with evidence that premium taxes paid have been will result in the discontinuation of the liability insurance rate add-on. If April 1 falls on a weekend, a national holiday, or a state holiday, then the first business day following April 1 of that year is the due date for the evidence of taxes paid. If acceptable evidence that taxes have been paid has not been received by HHSC within 60 days after the April 1 deadline, HHSC will recoup any add-on payments made to the contracted provider for the period in which taxes are unpaid. Once HHSC Rate Analysis receives evidence of taxes paid to the Texas Comptroller, HHSC will restore any add-on payments for that period previously withheld or recouped. Any vendor hold placed under 40 TAC §19.2308 (relating to Change of Ownership) will remain in place until evidence that all taxes on the premiums are paid to and received by the Texas Comptroller for all time periods for which the liability insurance add-on rate was paid to the contracted provider.

(f) Liability insurance payments will not be made to facilities that obtain insurance from an insurer or person engaged in unauthorized insurance as set forth in Chapter 101 of the Texas Insurance Code, Unauthorized Insurance. Providers will be notified by certified mail that the liability insurance payments are being stopped and of the provider's right to appeal the stoppage of payment with HHSC under 1 TAC §§357.481-357.490. It is the responsibility of the nursing facility contracted provider to ensure that liability insurance submitted for payment is authorized. Liability insurance payments made on insurance that is later determined by the Texas Department of Insurance to be unauthorized insurance under Chapter 101, Texas Insurance Code will be recouped. If the determination by TDI that the insurance is unauthorized is successfully appealed with TDI and the insurance is determined to be authorized, the liability insurance payments that were stopped will be paid to the provider.

(g) To qualify for the purchased liability insurance payment rates each contracted entity must submit the following to HHSC Rate Analysis:

(1) A completed liability insurance coverage certification form provided by HHSC Rate Analysis, signed by an authorized signatory for the contracted provider as per DADS Form 2031.

(2) A copy of evidence of coverage to include a certificate of insurance, the ACORD 25-S or similar document provided by the insurance company or agent that includes the type of coverage, effective and expiration dates of coverage, insurer, policy, and form number of policy contract, agent/producer, and claims made/occurrences. For catastrophic or excess liability coverage, the evidence of coverage must

also include the sum that the catastrophic or excess coverage must exceed to become payable. A binder is not acceptable as evidence of insurance.

(3) For independently procured liability insurance, the information identified in subsection (d) of this section.

(4) For insurance purchased through a captive insurance company, the information identified in subsection (e) of this section.

(h) If an insurance policy effective date is not the first day of the month, then the liability insurance payment rates will become effective the first day of the following month. If an insurance policy expiration date is not the last day of the month, then the liability insurance payment rates will be paid for the full month that includes the expiration date.

(i) It is the contracted provider's responsibility to notify HHSC Rate Analysis of any changes to liability insurance coverage including cancellation of coverage, change of insurance and renewal of coverage within 15 calendar days of the effective date of the change. Failure to notify HHSC Rate Analysis of cancellation of coverage or change of insurance could constitute Medicaid fraud. Renewals of coverage not received within 15 calendar days of the effective date of the renewal could result in the liability insurance payment rates being stopped until documentation of the renewal per subsection (f) of this section is received by HHSC Rate Analysis.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501482

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: May 1, 2005

Proposal publication date: November 19, 2004

For further information, please call: (512) 424-6900

## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

#### SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

##### 16 TAC §25.478

The Public Utility Commission of Texas (commission) adopts an amendment to §25.478, relating to Credit Requirements and Deposits with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 456). The amendment adds local law enforcement personnel, the Office of a Texas District Attorney or County Attorney, the Office of Attorney General, and grantees of the Texas Equal Access to Justice

Foundation to the list of entities authorized to designate a customer as a victim of family violence in order to demonstrate satisfactory credit for electric service. This amendment is adopted under Project Number 30047.

The commission received comments on the proposed amendment from Texas Legal Services Center (TLSC), the Texas Council on Family Violence (TCFV), and Reliant Energy, Incorporated (Reliant).

TLSC proposed that the rule be expanded to include providers of free civil legal services that are funded by the Texas Equal Access to Justice Foundation as entities authorized to certify a person as a victim of family violence in order to demonstrate satisfactory credit. TCFV supports the proposal. Reliant stated that it is not necessary to further expand the rule to allow legal providers the authority to make the certification.

#### *Commission Response*

The commission agrees with the proposal submitted by TLSC and makes the appropriate changes.

TLSC also proposed that the rule be expanded to apply to competitive providers as well as affiliated retail electric providers and the provider of last resort. TCFV supported this proposal.

#### *Commission Response*

Expanding the scope of the rule to apply to competitive providers was not originally contemplated by this project and therefore the proposed change cannot be made without republication. Rather than delay the adoption of the rule, the commission rejects the proposed change at this time. This issue may be reconsidered in the future.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and §39.101, which provides the commission with the authority to establish rules governing customer service, including customer deposits.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.101.

#### *§25.478. Credit Requirements and Deposits.*

(a) Credit requirements for residential customers. A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph. A REP other than an affiliated REP or POLR may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:

(i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;

(ii) is not delinquent in payment of any such electric service account; and

(iii) during the last 12 consecutive months of service was not late in paying a bill more than once.

(B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.

(C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.

(D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.

(E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:

(i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and

(ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*

(4) Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre-payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(5) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two

years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.

(b) Credit requirements for non-residential customers. A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.

(c) Initial deposits for applicants and existing customers.

(1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.

(2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.

(3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).

(d) Additional deposits by existing customers.

(1) A REP may request an additional deposit from an existing customer if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and

(B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.

(2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.

(3) A REP may terminate or disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.

(e) Amount of deposit.

(1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant

(A) shall not exceed an amount equivalent to the greater of

(i) one-fifth of the customer's estimated annual billing or;

(ii) the sum of the estimated billings for the next two months.

(B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.

(2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant

(3) If a customer or applicant qualifies for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds \$50 in two equal installments. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP to demonstrate that the customer is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

(f) Interest on deposits. A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission in December of the preceding year, pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(g) Notification to customers. When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(h) Records of deposits.

(1) A REP that collects a deposit shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP shall provide means for a depositor to establish a claim if the receipt is lost.

(3) A REP shall maintain a record of each unclaimed deposit for at least four years.

(4) A REP shall make a reasonable effort to return unclaimed deposits.

(i) Guarantees of residential customer accounts. A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:

(1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (e) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.

(5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.

(B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).

(6) The REP may initiate termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority) for nonpayment of the guaranteed amount only if the termination of service (or, where applicable, the disconnection of service) was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Service) or §25.483 of this title.

(j) Refunding deposits and voiding letters of guarantee.

(1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable, but no later than August 31, 2004.

(2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been

cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.

(3) If a customer's or applicant's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

(4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

(k) Re-establishment of credit. A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit.

(l) Upon sale or transfer of company. Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.

(m) This section is effective June 1, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2005.

TRD-200501427

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223

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**CHAPTER 26. SUBSTANTIVE RULES  
APPLICABLE TO TELECOMMUNICATIONS  
SERVICE PROVIDERS**

**SUBCHAPTER B. CUSTOMER SERVICE AND  
PROTECTION**

**16 TAC §26.24**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.24, relating to Credit Requirements and Deposits with changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 457). The amendment adds local law enforcement personnel, the Office of



a Texas District Attorney or County Attorney, the Office of Attorney General, and grantees of the Texas Equal Access to Justice Foundation to the list of entities authorized to designate a customer as a victim of family violence in order to demonstrate satisfactory credit for electric service. This amendment is adopted under Project Number 30046.

The commission received comments on the proposed amendment from Texas Legal Services Center (TLSC) and the Texas Council on Family Violence (TCFV).

TLSC proposed that the rule be expanded to include providers of free civil legal services that are funded by the Texas Equal Access to Justice Foundation as entities authorized to certify a person as a victim of family violence in order to demonstrate satisfactory credit. TCFV supported the proposal.

#### *Commission response*

The commission agrees with the proposal submitted by TLSC and makes the appropriate changes.

TLSC also proposed that the rule be expanded to apply to competitive providers as well as dominant certificated telecommunications utility (DCTU). TCFV supported this proposal.

#### *Commission Response*

Expanding the scope of the rule to apply to competitive providers was not originally contemplated by this project and therefore the proposed change cannot be made without republication. Rather than delay the adoption of the rule, the commission rejects the proposed change at this time. This issue may be reconsidered in the future.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §39.101, which provides the commission with the authority to establish rules governing customer service, including customer deposits.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.101.

#### *§26.24. Credit Requirements and Deposits.*

(a) Dominant certificated telecommunications utility (DCTU).

(1) Credit requirements for permanent residential applicants.

(A) A DCTU may require a residential applicant for local telecommunications service to establish and maintain satisfactory credit as a condition of providing service.

(i) Establishment of credit or payment of a deposit shall not relieve any customer from complying with the DCTU's requirements for prompt payment of bills.

(ii) The creditworthiness of spouses established during the last 12 months of shared service prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(B) A residential applicant can demonstrate satisfactory credit using one of the criteria listed in clauses (i) - (iv) of this subparagraph.

(i) Payment record. The residential applicant:

(I) has been a customer of any DCTU for residential local telecommunications service within the last two years;

(II) is not delinquent in payment of any residential DCTU service;

(III) during the last 12 consecutive months of service was not late in paying a bill more than once and did not have service disconnected for nonpayment; and

(IV) upon request, shall receive a letter of credit history from the applicant's previous DCTU. DCTUs are required to keep payment history for two years after termination of service to a customer.

(ii) Other means. The residential applicant demonstrates a satisfactory credit rating by appropriate means, including, but not limited to, the production of:

(I) generally accepted credit history;

(II) letters of credit reference;

(III) the names of credit references which may be quickly and inexpensively contacted by the utility; or

(IV) ownership of substantial equity that is easily liquidated.

(iii) Senior applicant. The residential applicant is 65 years of age or older and does not have an outstanding residential service account balance incurred within the last two years with a DCTU.

(iv) Victim of family violence: The residential applicant has been determined to be a victim of family violence as defined in Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence.

(C) The DCTU may require the applicant to pay a deposit only if the applicant does not demonstrate satisfactory credit using the criteria in subparagraph (B) of this paragraph.

(2) Credit requirements for non-residential applicants. The DCTU may require a non-residential applicant to pay a deposit if the applicant's credit for service has not been demonstrated satisfactorily to the DCTU.

(3) Credit requirements for temporary or seasonal service and for weekend residences. The DCTU may establish credit policy and deposit requirements to reasonably protect it against the assumed risk for temporary or seasonal service or service to a weekend residence, as long as the policy and requirements are applied in a uniform and nondiscriminatory manner. The DCTU shall return deposits according to guidelines set out in paragraph (11) of this subsection.

(4) Initial deposits.

(A) A residential applicant or customer who is required to pay an initial deposit may provide the DCTU with a written letter of guarantee instead of paying a cash deposit.

(B) A DCTU shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. Instead of an initial deposit, the customer may pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(5) Additional deposits.

(A) During the first 12 months of service, the DCTU may request an additional deposit if the customer's actual usage:

(i) is at least three times estimated usage (or three times average usage of the three most recent bills);

(ii) exceeds \$150; and

(iii) exceeds 150% of the security held.

(B) A DCTU may also require an additional deposit if:

(i) actual billings of a residential customer are at least twice the amount of the estimated billings after two billing periods;

(ii) actual billings of a non-residential customer are at least twice the amount of the estimated billings; and

(iii) a suspension or disconnection notice was issued for the account within the previous 12 months.

(C) A DCTU may require an additional deposit be paid within ten days after issuing written notice of suspension or disconnection and requesting an additional deposit.

(D) Instead of an additional deposit, a residential customer may elect to pay the total amount due on the current bill by the due date of the bill, provided the customer has not exercised this option in the previous 12 months.

(E) The DCTU may disconnect service if the additional deposit or the current usage payment is not paid within ten days of request provided a written suspension or disconnection notice has been issued to the customer. A suspension or disconnection notice may be issued concurrently with the written request for the additional deposit or current usage payment.

(6) Amount of deposit. When a DCTU requires a deposit:

(A) The total of all deposits, initial and additional, shall not exceed an amount equivalent to one-sixth of the estimated annual billing, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service).

(B) The estimated annual billings shall not include charges that are not in a DCTU's tariff.

(C) For residential applicants and customers:

(i) estimated annual billings:

(I) shall not include long distance charges from other service providers;

(II) may include charges for tariffed local telecommunications services;

(III) may include charges for intraLATA toll only if the DCTU or its affiliate is providing this service to the customer; and

(IV) may include charges for interLATA toll only if the DCTU or its affiliate is providing this service to the customer.

(ii) the deposit amount related to local telecommunications service and long distance service shall be separately identified.

(iii) the deposit amount related only to basic local telecommunications service may be required as a condition for providing basic local telecommunications services.

(D) For non-residential applicants and customers, estimated annual billings may include long distance charges only when the DCTU bills those charges.

(7) Interest on deposits.

(A) Each DCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code Annotated §183.003 (Vernon 1998) (relating to Rate of Interest).

(i) If a deposit is refunded within 30 days of receipt, no interest payment is required.

(ii) If the utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(B) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(C) The deposit shall draw interest until the date it is returned or credited to the customer's account.

(8) Notification to applicants and customers. When a deposit is required, the DCTU shall explain to applicants or customers the terms and conditions related to deposits and refunds.

(9) Records of deposits. The DCTU shall:

(A) Keep records to show:

(i) the name and address of each depositor;

(ii) the amount and date of the deposit; and

(iii) each transaction concerning the deposit;

(B) Issue a receipt of deposit to each applicant or customer paying a deposit and provide means for a depositor to establish claim if the receipt is lost;

(C) Keep deposit records for one year after a deposit is refunded;

(D) Maintain each unclaimed deposit for at least four years;

(E) Make a reasonable effort to return an unclaimed deposit;

(F) Upon the sale or transfer of any DCTU or any of its operating units, provide the buyer with all deposit records.

(10) Guarantees of residential customer accounts.

(A) A guarantee between a DCTU and a guarantor must be in writing and shall be for no more than the amount of deposit the DCTU would require on the customer's account pursuant to paragraph (6) of this subsection. The amount of the guarantee shall be clearly indicated in the signed agreement.

(B) The guarantee shall be voided and returned to the guarantor according to the provisions of paragraph (11) of this subsection.

(C) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount in the written agreement.

(D) The DCTU shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(i) The DCTU shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next work day.

(ii) The DCTU may transfer the amount owed on the defaulted account to the guarantor's own service bill provided the guaranteed amount owed is identified separately on the bill.

(E) The DCTU may disconnect service to the guarantor for nonpayment of the guaranteed amount only if the disconnection was included in the terms of the written agreement and only after proper notice as described by subparagraph (D) of this paragraph, and §26.28 of this title (relating to Suspension or Disconnection of Service).

(11) Refunding deposits and voiding letters of guarantee.

(A) If service is not connected, or is disconnected, the DCTU shall:

(i) promptly void and return to the guarantor all letters of guarantee on the account; or

(ii) provide written documentation that the contract has been voided; or

(iii) refund the applicant's or customer's deposit plus accrued interest on the balance in excess of the unpaid bills for service furnished.

(B) If residential service is disconnected, the DCTU shall ensure that the deposit amount for local telecommunications service is applied first to local telecommunications service charges.

(C) A transfer of service from one premise to another within the service area of the DCTU is not a disconnection.

(D) The DCTU shall promptly refund the deposit plus accrued interest to the customer, or void and return the guarantee, or provide written documentation that the contract has been voided, when the customer:

(i) paid bills for 12 consecutive residential billings or for 24 consecutive non-residential billings without having service disconnected for nonpayment;

(ii) was not late in paying a bill more than twice in the last 12 consecutive billings (24 for non-residential); and

(iii) is not delinquent in the payment of the current bill.

(E) If the customer does not meet the refund criteria in subparagraph (D) of this paragraph, the DCTU may retain the deposit and interest or the letter of guarantee.

(12) Re-establishment of credit.

(A) Before service is reconnected, the DCTU may require an applicant whose service was previously disconnected for nonpayment or theft of service, to reestablish credit and to pay:

(i) all amounts due the DCTU; or

(ii) execute a deferred payment agreement, if offered.

(B) The DCTU must prove that the amount due for services furnished and any other charges required as a condition of local service restoration are correct.

(C) The DCTU may require a residential applicant to pay or execute a deferred payment agreement only for the total amount due for tariffed local telecommunications service in order to receive basic local telecommunications service.

(13) Customer credit and deposit information. A DCTU shall safeguard customer credit and deposit information in accordance

with §26.122 of this title (relating to Customer Proprietary Network Information).

(b) Non-dominant certificated telecommunications utility (NCTU).

(1) Credit requirements for permanent residential applicants. An NCTU may require a residential applicant for local telecommunications service to establish and maintain satisfactory credit as a condition of providing service.

(A) Establishment of credit or payment of a deposit shall not relieve any customer from complying with the NCTU's requirements for prompt payment of bills.

(B) The creditworthiness of spouses established during the last 12 months of shared service prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(2) Amount of deposit. When an NCTU requires a deposit:

(A) The total of all deposits, initial and additional, shall not exceed an amount equivalent to one-sixth of the estimated annual billing.

(B) For residential applicants and customers:

(i) estimated annual billings shall not include long distance charges from other non-affiliated service providers;

(ii) the deposit amount related to local telecommunications service and long distance service shall be separately identified; and

(iii) the deposit amount related only to basic local telecommunications service may be required as a condition for providing basic local telecommunications services.

(3) Interest on deposits.

(A) Each NCTU requiring deposits shall pay interest, compounded annually, on these deposits. The annual rate shall be at least equal to that set by the commission on December 1 of the preceding year, pursuant to Texas Utilities Code Annotated §183.003 (Vernon 1998) (relating to Rate of Interest).

(i) If a deposit is refunded within 30 days of receipt, no interest payment is required.

(ii) If the utility keeps the deposit more than 30 days, payment of interest shall be made retroactive to the date of deposit.

(B) Payment of interest shall be made at the time a deposit is returned or credited to the customer's account.

(C) The deposit shall draw interest until the day it is returned or credited to the customer's account.

(4) Notification to applicants and customers. When a deposit is required, the NCTU shall explain to applicants or customers the terms and conditions related to deposits and refunds.

(5) Records of deposits. The NCTU shall:

(A) Keep records to show:

(i) the name and address of each depositor;

(ii) the amount and date of the deposit; and

(iii) each transaction concerning the deposit;

(B) Issue a receipt of deposit to each applicant or customer paying a deposit and provide means for a depositor to establish claim if the receipt is lost;

(C) Keep deposit records for one year after a deposit is refunded;

(D) Maintain each unclaimed deposit for at least four years;

(E) Make a reasonable effort to return an unclaimed deposit; and

(F) Upon the sale or transfer of any NCTU or any of its operating units, provide the buyer with all deposit records.

(6) Refunding deposits.

(A) If service is not connected, or is disconnected, the NCTU shall promptly refund the customer's deposit plus accrued interest on the balance in excess of the unpaid bills for service furnished.

(B) If residential service is disconnected, the NCTU shall ensure that the deposit amount for local telecommunications service is applied first to local telecommunications service charges.

(C) An NCTU shall refund the deposit and interest when the customer meets the NCTU's refund criteria.

(7) Customer credit and deposit information. An NCTU shall safeguard customer credit and deposit information in accordance with §26.122 of this title.

(c) NCTU implementation. NCTUs shall implement this section no later than March 1, 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2005.

TRD-200501428

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



## **TITLE 22. EXAMINING BOARDS**

### **PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING**

#### **CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES**

##### **SUBCHAPTER E. CONTESTED CASES**

###### **22 TAC §661.100**

The Texas Board of Professional Land Surveying (TBPLS) adopts a new rule §661.100, concerning Probation Guidelines, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 807) and will not be republished.

The new rule outlines the guidelines to be followed in response to a complaint or violation of the Act and Board Rules in addition to or in lieu of an action to revoke, suspend, reprimand, refuse to renew or assess a penalty.

No comments were received regarding the new rule.

The new rule is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200501468

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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Proposal publication date: February 18, 2005

For further information, please call: (512) 452-9427



###### **22 TAC §661.102**

The Texas Board of Professional Land Surveying (TBPLS) adopts new §661.102, concerning Alternative Dispute Resolution for Personnel and Contracting Matters, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 808) and will not be republished.

The new section outlines the guidelines to be followed to resolve disputes involving personnel and contracting matters.

No comments were received regarding the new section.

The new section is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



###### **22 TAC §661.104**

The Texas Board of Professional Land Surveying (TBPLS) adopts new §661.104, concerning Negotiated Rulemaking, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 809) and will not be republished.

The new section outlines the Board's policy to encourage public input and employ negotiated rule making procedures in the Board's rule making process when appropriate.

No comments were received regarding the new section.

The new section is adopted pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties and to comply with Sunset Commission requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

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For further information, please call: (512) 452-9427



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

#### SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS

##### 28 TAC §7.401, §7.410

The Commissioner of Insurance adopts the repeal of §7.401 and §7.410 concerning risk-based capital and surplus. The repeal of these sections is adopted without changes to the proposal published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11906).

The repeal of the sections is necessary to adopt a new §7.401 which appears elsewhere in this issue of the *Texas Register*. The new §7.401 consolidates the rules for risk-based capital and surplus for all insurers and HMOs in one section.

The purpose of the repeal is to eliminate obsolete sections.

No comments were received on the proposal.

The repeal of the sections is adopted under the Insurance Code §§822.210, 841.205, 884.206, 885.401 and 36.001. Sections 822.210, 841.205, 884.206 and 885.401 provide that the commissioner may adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2005.

TRD-200501430

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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Proposal publication date: December 24, 2004

For further information, please call: (512) 463-6327



##### 28 TAC §7.401

The Commissioner of Insurance adopts new §7.401 concerning risk-based capital and surplus requirements for insurers and health maintenance organizations. The new section is adopted with a change to the proposal published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11906).

The new section is necessary to adopt the 2003 and 2004 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2003 and 2004 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2003 and 2004 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2003 and 2004 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. The adopted section also provides for specific actions by the commissioner or the reporting entity when the total adjusted capital of the reporting entity falls to certain levels specified in the section. Finally, the adopted section is necessary to effect the consolidation of the existing risk-based capital rules. A minor change was made in §7.401(g)(2) to correct a typographical error. Notice of the adopted repeal of §7.401 and §7.410, and amendment of §11.809 appears elsewhere in this issue of the *Texas Register*.

The risk-based capital requirement is a method of ensuring that an insurer has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of an insurer. The adopted section will provide the department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for an insurance company to support its overall business operations in consideration of its size and risk exposure and provide for specific actions by the commissioner or the reporting entity when the total adjusted capital of the reporting entity falls to certain levels.

No comments were received.

The new section is adopted under the Insurance Code Articles 1.10, 1.32, 21.21, 21.28-A and §§ 822.210, 841.205, 843.404, 885.401, 884.206, and 36.001. Article 1.10, §5 addresses the duties of the department when an insurer's solvency is impaired. Article 1.32 authorizes the commissioner to fix standards for evaluating the financial condition of an insurer. Article 21.21, §13 authorizes the commissioner to adopt rules necessary to regulate trade practices in the business of insurance. Article 21.28-A relates to the prevention of insurer delinquencies, supervision and conservatorship proceedings and authorizes the adoption of rules as necessary. Sections 822.210, 841.205, 884.206 authorize the commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of health maintenance organizations for

the protection of enrollees. Section 885.401 authorizes the commissioner to require fraternal benefit societies to submit reports the commissioner deems necessary. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

*§7.401. Risk-Based Capital and Surplus Requirements.*

(a) Purpose. The purpose of implementing a risk-based capital and surplus provision is to require a minimum level of capital and surplus to absorb the financial, underwriting, and investment risks assumed by an insurer or a health maintenance organization.

(b) Scope.

(1) Life companies. This section applies to any insurer authorized to do business in Texas as an insurance company that writes or assumes life insurance, annuity contracts or liability on, or indemnifies any one person for, any risk under a health, accident, sickness, or hospitalization policy, or any combination of those policies, in an amount in excess of \$10,000 including: capital stock companies, mutual life companies, fraternal benefit societies, and stipulated premium companies doing business in other states. Fraternal benefit societies are subject to their own separate risk-based capital instructions as provided in subsection (d)(2) of this section. This section does not apply to stipulated premium companies only doing business in Texas.

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of the Insurance Code §§822.210 and 982.106, excluding those insurers that are only authorized to write mortgage guaranty insurance in all states in which they are licensed and excluding those insurers that write business only in this state and are not required by law to have capital stock.

(3) Health Maintenance Organizations and insurers required to file the NAIC Health Blank. This section applies to all domestic and foreign health maintenance organizations subject to the provisions of Insurance Code Chapter 843 and insurers that file the NAIC Health Blank with the department under department filing requirements.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual financial statement--The annual statement blank to be used by insurance companies, as promulgated by the NAIC and as adopted by the commissioner.

(2) Authorized control level--The result determined under the RBC formula in accordance with the RBC instructions.

(3) NAIC--National Association of Insurance Commissioners.

(4) RBC formula--NAIC risk-based capital formula.

(5) RBC instructions--NAIC Risk-Based Capital Report Including Overview and Instructions for Companies.

(6) Total adjusted capital--An insurer's adjusted statutory capital and surplus as determined under the RBC formula in accordance with the RBC instructions.

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following:

(1) The 2003 and 2004 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2003 and 2004 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2003 and 2004 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2003 and 2004 NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(e) Filing requirements.

(1) All companies, except fraternal, subject to this section are required to file electronically with the NAIC in accordance with and by the due date specified in the RBC instructions.

(2) Fraternal shall maintain a paper copy of the report for review by the department.

(f) Conflicts. In the event of a conflict between the Insurance Code, any rule of the department or any specific requirement of this section, and the RBC formula and/or the RBC instructions, the Insurance Code, rule or specific requirement of this section shall take precedence and in all respects control. It is the express intent of this section that the adoption by reference of the NAIC Risk-Based Capital Reports Including Overview and Instructions for Companies do not repeal or modify or amend any rule of the department or any provision of the Insurance Code.

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital require the following actions related to an insurer within the specified ranges:

(1) An insurer reporting total adjusted capital of 150% to 200% of authorized control level risk-based capital institutes a company action level under which the insurer must prepare a comprehensive financial plan that identifies the conditions that contribute to the company's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the company's financial condition, both with and without the proposed corrections. The plan must list the key assumptions underlying the projections and identify the concerns associated with the insurer's business. The RBC plan is to be submitted within 45 days. After review the commissioner will notify the company if the plan is satisfactory. In the event the commissioner notifies the company that the plan is not satisfactory, the company shall prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the next lower action level described in this subsection.

(2) An insurer reporting total adjusted capital of 100% to 150% of authorized control level risk-based capital triggers a regulatory action level initiative. At this action level, an insurance company is also required to file an RBC plan or revised RBC plan within 45 days, and the commissioner is required to perform any examinations or analyses to the insurer's business and operations that is deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) An insurer reporting total adjusted capital of 70% to 100% of authorized control level risk-based capital triggers an authorized control level. In addition to the remedies available at the higher action levels, the commissioner may take other action deemed necessary, including initiating a regulatory intervention to place an insurer under regulatory control.

(4) An insurer reporting total adjusted capital of less than 70% of authorized control level triggers a mandatory control level which subjects the insurer to one of the following actions:

(A) being placed in supervision or conservation;

(B) being determined to be in hazardous financial condition as provided by the Insurance Code Article 1.32, and §8.3 of this title (relating to Hazardous Conditions) regardless of percentage of assets in excess of liabilities;

(C) being determined to be impaired as provided by the Insurance Code Articles 1.10, §5 or 3.60; or

(D) any other applicable sanctions under the Texas Insurance Code.

(5) A life insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200% and 250%. Any life insurer that trends below 190% of total adjusted capital to authorized control level risk-based capital would trigger the company action level.

(h) Prohibition on announcements. Except as otherwise required under the provisions of this section, the making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion, representation or statement with regard to any component derived in the calculation, by any insurer, agent, broker or the person engaged in any manner in the insurance business would be misleading and is, therefore, prohibited. Any violation of this subsection may be considered a violation of Insurance Code Article 21.21 §(4)(2).

(i) Prohibition on use in ratemaking. The RBC instructions and any related filings are intended solely for use by the commissioner in monitoring the solvency of insurers subject to this section and in taking corrective action with respect to insurers and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or any affiliate is authorized to write.

(j) Limitations. In no event shall the requirements of this section reduce the amount of capital and surplus otherwise required by provisions of the Insurance Code or the Texas Administrative Code, or by authority of the commissioner of insurance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 5, 2005.

TRD-200501431

Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: April 25, 2005  
Proposal publication date: December 24, 2004  
For further information, please call: (512) 463-6327



## CHAPTER 11. HEALTH MAINTENANCE ORGANIZATIONS

### SUBCHAPTER I. FINANCIAL REQUIREMENTS

#### 28 TAC §11.809

The Commissioner of Insurance adopts an amendment to §11.809 concerning financial requirements for health maintenance organizations (HMOs) and certain insurers. The amendment is adopted without changes to the proposal published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11909).

The amendment is necessary to facilitate the adoption of the new §7.401 adopted elsewhere in this issue of the *Texas Register*. The amendment is also necessary to delete the obsolete risk-based capital requirements in this section.

The adopted section will direct HMOs and insurers which file the NAIC health blank to the new section which consolidates the risk-based capital rules for all insurers and HMOs in one section while assuring awareness that the risk-based capital rules for HMOs and certain other insurers have not be eliminated.

No comments were received on the proposal.

The amendment is adopted under the Insurance Code §§843.404 and 36.001. Section 843.404 authorizes the commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of health maintenance organizations for the protection of enrollees. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200501432  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
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For further information, please call: (512) 463-6327



## PART 2. TEXAS WORKERS' COMPENSATION COMMISSION

## CHAPTER 102. PRACTICES AND PROCEDURES--GENERAL PROVISIONS

### 28 TAC §§102.3 - 102.5

The Texas Workers' Compensation Commission (the commission) adopts amendments to §§102.3 - 102.5, without changes to the proposed text published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 462).

As required by the Government Code §2001.033, the commission's reasoned justification for these rules is set out in this order, which includes the preamble, which in turn includes the rules. This preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rules, and the reasons why the commission disagrees with some of the comments and proposals.

No changes were made to the proposed rules in response to public comment received in writing, which are described in the summary of comments and responses section of this preamble. No public comment was received at a public hearing held on February 17, 2005.

The adopted amendments establish a primary framework for the commission's transition to an electronic billing system. Currently, the majority of medical bills in the Texas workers' compensation system are submitted on paper forms to insurance carriers, third party administrators, or to medical bill review vendors. Minimal electronic billing occurs in the system.

House Bill 2511 (HB 2511), passed in 1999 by the 76th Texas Legislature, added Texas Labor Code §401.024 which allows the commission to adopt rules to permit or require electronic transmission in place of established forms, manners, or procedures that require paper processing. The adopted amendments are part of the commission's Electronic Billing and Reimbursement (eBill) project initiated to identify and implement an electronic billing solution for the Texas workers' compensation system. The eBill project is a component of the commission's Business Process Improvement (BPI) initiative; a coordinated set of projects that use technology to streamline agency processes to meet the goals set out in HB 2511.

Adopted amendments to Chapter 102, concerning Practices and Procedures - General Provisions, apply the provisions of that chapter to medical benefits; modify language to define electronic communication and electronic transmission; and include Claim and Medical Electronic Data Interchange (EDI) and electronic billing and reimbursement as electronic transmissions. The amended rules will allow greater flexibility for system participants to exchange medical billing, reimbursement, and documentation data electronically.

Adopted amendments to §102.3(f) remove the reference to specific rules so that if there is a conflict between this rule and provisions of another rule applicable to a specific type of benefit, the other rule prevails.

No changes were made to the amendments as proposed to §102.4, concerning General Rules for Non-Commission Communications. The adopted amendment to subsection (h) clarifies that the provisions of subsection (h)(2) refer to mail sent via the United States Postal Service regular mail. The adopted amendment to subsection (k) expands the definition of written communication by including "submissions." The adopted

amendment to subsection (m) defines electronic communications and electronic transmissions consistent with §401.024(a) of the Texas Labor Code. This adopted amendment is consistent with §401.024(a) of the Texas Workers' Compensation Act. Adopted new subsection (p) establishes the date of receipt for non-commission communications. Received date is important in medical bill submission and processing and by defining the received date the commission is able to more effectively enforce these rules.

The adopted amendments to subsection (d) of §102.5, concerning General Rules for Written Communications to and from the Commission, adds the term "the earliest of" to clarify which receipt date will be used when more than one method can be applied to the facts and clarify that the term "mail" applies to United States Postal Service regular mail.

These adopted amendments also allow the commission to implement use of an electronic mail box in place of the physical mail box currently used by insurance carrier Austin representatives to support the transition to electronic mail communication under the BPI initiative. The adopted amendments to subsections (e) and (f) are consistent with language in §102.4(m) and Texas Labor Code §401.024(a), which define electronic communication and electronic transmission. Adopted amendments to subsections (e) and (f) also include Claim and Medical Electronic Data Interchange (EDI) and electronic billing and reimbursement as electronic transmissions. The adopted amendment to subsection (g) expands the definition of written communication by including "submissions." The adopted amendment to subsection (h) defines the meaning of electronic transmissions and is consistent with §401.024(a) of the Texas Workers' Compensation Act.

A comment supporting the proposed amendments to §§102.3 - 102.5 was received from the Insurance Council of Texas.

Comments opposing the proposed amendment to §§102.3 - 102.5 were received from the following groups: Rogers, Booker, and Trevino, P.C. and Absolve Dance Studio.

Summaries of the comments and commission responses are as follows:

COMMENT: Commenter stated support of the adopted amendments. Commenter stated the move to electronic bill submissions and reimbursement data will result in significant improvements in the timely billing and payment of medical bills for treatment provided to injured employees and will also result in significant cost savings to the workers' compensation system by reducing the amount of paper that flows to and from the various system participants.

RESPONSE: The commission agrees.

COMMENT: Commenter stated that proposed §102.4(p) is contrary to current §130.12(b) and that the rule should specify that other rules requiring delivery through verifiable means would not be trumped by §102.4(p).

RESPONSE: The commission disagrees that subsection (p) of §102.4, relating to General Rules for Non-Commission Communication, conflicts with subsection (b) of §130.12, relating to the Finality of the First Certification of Maximum Medical Improvement and/or First Assignment of Impairment Rating since these two rules regulate different types of communication. Section 102.4(p) relates to communication between parties that do not



involve the commission. Section 130.12(b) relates to the timeframes to appeal decisions of maximum medical improvement and/or first assignment of impairment rating to the commission.

COMMENT: Commenter stated that §102.5(d) does not address issues raised by the appeals panel and court decisions regarding actual receipt date. Commenter suggested use of the language, "unless the recipient acknowledges receipt at an earlier date." Commenter further recommended that the receipt date in §102.5(d) be the first working day five days after the date mailed via United States Postal Service and the deemed receipt date should only be on a working day because holidays affect the receipt date for insurance carriers and injured workers on holidays. The commenter further stated that it does not seem reasonable to apply the working day provision only to communication placed in the insurance carrier's Austin representative box. Finally, the commenter states that such a provision gives the impression of being consistent with §102.2(a)(3).

RESPONSE: The commission understands the commenter's points regarding the actual receipt date. No change to the proposed amendments to subsection (d) of §102.5 will be made at this time. Additional language to address commenter's concerns will likely be proposed in the future as the commission's transition to an electronic billing system progresses beyond the foundational level and further amendments are appropriate. The commission disagrees that the working day provision needs to be added to this rule as subsection (d) of §102.3, relating to Computation of Time, already addresses the commenter's concerns. The computation of time relating to receipt of correspondence on a non-working day is addressed in subsection (d) of §102.3 which indicates that "any written or telephonic communication received other than during normal business hours on working days are considered received at the beginning of normal business hours on the next working day." The commission disagrees with the reference to §102.2(a)(3) relating to Gifts, Grants, and Donations, as the two rules are unrelated.

COMMENT: Commenter states that the commission does not have the power to change §410.202(a), statutory "received" requirement to a "deemed received" requirement.

RESPONSE: The commission disagrees. The adopted amendments do not conflict with the statutory requirements of receipt dates. Section 410.202(a) relates to the timeframe for responding to correspondence. Adopted §102.5(d) defines the receipt dates of written communication to and from the commission and not the timeframe to respond to such correspondence.

The amended rules are adopted pursuant to the Texas Labor Code §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act; Texas Labor Code §401.024, which provides the commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code §402.042 which authorizes the Executive Director to enter orders as authorized by the statute as well as to prescribe the form, manner, and procedure for transmission of information to the commission; Texas Labor Code §402.061, which authorizes the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers' Compensation Act; Texas Labor Code §413.008 which authorizes the commission to collect certain medical bill and payment information from the insurance carrier; and HB 2511, 76th Texas Legislature which sets goals for the reduction of paper communication requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2005.

TRD-200501471

Susan Cory

General Counsel

Texas Workers' Compensation Commission

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For further information, please call: (512) 804-4288



## CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

### SUBCHAPTER I. PROVIDER BILLING PROCEDURES

#### 28 TAC §134.800, §134.802

The Texas Workers' Compensation Commission (the commission) adopts amendments to §134.800 and §134.802 without changes to the proposed text published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 465).

As required by the Government Code §2001.033, the commission's reasoned justification for these rules is set out in this order, which includes the preamble, which in turn includes the rules. This preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rules, and the reasons why the commission disagrees with some of the comments and proposals.

No changes were made to the proposed rules in response to public comment received in writing, and as described in the summary of comments and responses section of this preamble. No public comment was received at a public hearing held on February 17, 2005.

The adopted amendments establish a primary framework for the commission's transition to an electronic billing system. Currently, the majority of medical bills in the Texas workers' compensation system are submitted on paper forms to insurance carriers, third party administrators, or to medical bill review vendors. Minimal electronic billing occurs in the system. Insurance carriers reported professional and hospital bill payment data to the commission in electronic file formats developed specifically for Texas workers' compensation. The commission did not collect pharmacy and dental billing and payment data in this format. The commission is implementing a national standard electronic format for carrier reporting of all bill types.

House Bill 2511 (HB 2511), passed in 1999 by the 76th Texas Legislature, added Texas Labor Code §401.024 which allows the commission to adopt rules to permit or require electronic transmission in place of established forms, manners, or procedures that require paper processing. The adopted amendments

are part of the commission's Electronic Billing and Reimbursement (eBill) project initiated to identify and implement an electronic billing solution for the Texas workers' compensation system. The eBill project is a component of the commission's Business Process Improvement (BPI) initiative--a coordinated set of projects that use technology to streamline agency processes to meet the goals set out in HB 2511.

Adopted amendments to Chapter 134, concerning Benefits--Guidelines for Medical Services, Charges, and Payments, specify that the use of standard medical billing forms is applicable to medical bills submitted in paper form and does not apply to medical bills submitted electronically. Additionally, the adopted amendments clarify that a carrier's reporting of medical billing data to the commission includes payment data. The amended rules will allow greater flexibility for system participants to exchange medical billing, reimbursement, and documentation data electronically.

Adopted amendments to subsections (a) and (e) of §134.800, concerning Required Billing Forms and Information, allow health care providers and insurance carriers to exchange medical bill data, payment data, and documentation electronically by mutual agreement. The adopted amendments require that the agreement must include stipulations defining a complete electronic medical bill and the method and manner in which related documentation is submitted to the insurance carrier. The adopted amendments exclude transmission by facsimile and electronic mail in the mutual agreement provision. The adopted amendments replace the term "Medical Review Division" with "Commission" in subsection (f) because other divisions within the commission may order medical providers to reimburse insurance carriers.

Adopted amendments to §134.802, concerning Insurance Carrier's Submission of Medical Bills to the Commission, adds the phrase "and payment" to the insurance carrier requirement to submit medical billing data to the commission. The adopted amendments do not change current reporting processes or requirements. This expands the requirement to allow the commission to collect medical bill and payment information, which includes payment, denial, and refund data. The adopted amendments also change the title from "Insurance Carrier's Submission of Medical Bills to the Commission" to "Insurance Carrier Medical Electronic Data Interchange to the Commission" and is consistent with the commission's BPI Medical EDI project.

A comment supporting the proposed amendments to §134.800 and §134.802 was received from the Insurance Council of Texas.

A summary of the comment and commission response is as follows:

COMMENT: Commenter stated support of the adopted amendments. Commenter stated the move to electronic bill submissions and reimbursement data will result in significant improvements in the timely billing and payment of medical bills for treatment provided to injured employees and will also result in significant cost savings to the workers compensation system by reducing the amount of paper that flows to and from the various system participants.

RESPONSE: The commission agrees.

The amended rules are adopted pursuant to the Texas Labor Code §402.061, which requires the commission to adopt rules necessary for the implementation and enforcement of the Texas Workers Compensation Act. The amendments are adopted

under the following statutes: Texas Labor Code §402.061, which gives the Commission the authority to adopt rules as necessary to implement and enforce the Act; Texas Labor Code §401.024, which provides the Commission the authority to require use of facsimile or other electronic means to transmit information in the system; Texas Labor Code §402.042, which authorizes the executive director to enter orders as authorized by the statute as well as to prescribe the form manner and procedure for transmission of information to the Commission; Texas Labor Code §408.025, which requires the Commission to specify by rule the reports a health care provider is required to file; Texas Labor Code §408.027, which provides for insurance carrier payment of health care providers; Texas Labor Code §413.007, which directs the Medical Review Division to maintain a statewide database of medical billing information; Texas Labor Code §413.008 which authorizes the commission to collect certain medical bill and payment information from the insurance carrier and HB 2511, 76th Texas Legislature which sets goals for the reduction of paper communication requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2005.

TRD-200501472

Susan Cory

General Counsel

Texas Workers' Compensation Commission

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For further information, please call: (512) 804-4288

## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### **CHAPTER 65. WILDLIFE**

##### **SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION**

##### **DIVISION 1. GENERAL PROVISIONS**

##### **31 TAC §65.11**

The Texas Parks and Wildlife Commission adopts an amendment to §65.11, concerning Lawful Means, without changes to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1028).

The amendment to §65.11, concerning Lawful Means, which adds a provision to prohibit the take or attempted take of wildlife resources by anyone not personally present at the location where the take or attempted take occurs, is necessary for the department to be able to ensure compliance with laws regarding hunting license possession and use. The department has become aware of recent adaptations of firearms and computer systems that would make it technologically possible for persons to take wildlife resources by use of electromechanical interfaces while

not being physically present at the location where the wildlife resources are taken. The amendment is necessary because there is no way for the department to verify compliance with hunting license laws if the participating party is not physically present when and where a wildlife resource is hunted. The amendment also affects rules regarding the use of vehicles to hunt desert bighorn sheep. The current rule prohibits the use of a motorized conveyance to locate or hunt desert bighorn sheep. Until recently, the hunting of bighorn sheep was conducted exclusively on department lands, where the department has the authority to prohibit hunting from vehicles. However, in recent years the department has issued permits that authorize the hunting of bighorn sheep on private property. Under the provisions of Parks and Wildlife Code, §62.003, persons may hunt from a vehicle on private property. The proposed amendment would make the regulation consistent with the statute.

The rule will function by prohibiting the take of wildlife resources by any person who is not personally present at the location where the take or attempted take occurs and who does not personally operate the means of take. The amendment also would function by making the rules governing the hunting of desert bighorn sheep consistent with statutory provisions.

The department received 18 comments in opposition to the adoption of the portion of the rule governing remote-controlled hunting. Ten of those commenting provided an elaboration of the reasons for opposing adoption. The department's response to those comments is as follows.

One commenter opposed adoption of the proposed rule and stated that the assumption that licenses can't be validated is incorrect. The commenter went on to say that license data could be required to be entered prior to the system allowing control of the firearm, followed by a simple validation scheme in conjunction with the TPWD servers. The commenter further stated that the department's position was like saying that a store can't validate a credit card number and balance if the customer isn't personally present. The department disagrees with the commenter and responds that license validation isn't the issue; compliance with rules governing license possession and use is the issue. It is impossible for officials in Texas to verify that a person hunting via a remote-controlled firearm is or is not the person to whom a license was issued. The department also responds that the credit card analogy is not apposite, since the validation of a credit card establishes only whether the card is valid and the account balance is sufficient, not the identity of the person presenting the card. The department also responds that even if license compliance could be verified via electronic means, the cost to the department could not be justified given the minuscule number of persons likely to use such systems. No changes were made as a result of the comment.

One commenter opposed adoption of the portion of the rule applying to remote-controlled hunting and stated: "What if there's an emergency and a person has to leave in a hurry, the form in the Rule book is fine, If a Game Warden checks someone and this is the case make it a requirement for him to follow up on it." The department is unable to determine the intent of the comment and disagrees that any change is necessary. No changes were made as a result of the comment.

The department received eight additional comments opposing adoption of the portion of the proposed rule prohibiting remote-controlled hunting; however, the comments contained unambiguous elaborations to the effect that the commenters actually disapproved of the use of remotely controlled firearms

for hunting. The department can only surmise that the commenters actually opposed remote-controlled hunting and did not understand that the proposal would prohibit, rather than allow, remote-controlled hunting. In any event, no changes were made as a result of the comments.

The department received eight additional comments opposing adoption of the portion of the proposed rule addressing remote-controlled hunting. The commenters did not elaborate upon their rationale for opposition. The department disagrees with the comments. No changes were made as a result of the comments.

The department received 320 comments supporting adoption of the portion of the proposed rule affecting hunting by remote control.

The Texas Wildlife Association and the Texas Deer Association supported adoption of the portion of the rule governing remote-controlled hunting.

The department received 57 comments opposing adoption of the portion of the proposed rule that would allow the use of motorized conveyances to locate or hunt bighorn sheep. The department disagrees with the comments and responds that hunting from a vehicle on private property is lawful under Parks and Wildlife Code, §62.003. No changes were made as a result of the comments.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the commission with authority to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 8, 2005.

TRD-200501481

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Commission

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Proposal publication date: February 25, 2005

For further information, please call: (512) 389-4775

## PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

### CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

#### 31 TAC §523.6

The Texas State Soil and Water Conservation Board (State Board) adopts amendments to 31 TAC §523.6(e)(2) concerning when the State Board may grant a waiver for a landowner to receive cost-share more than once on a certified water quality management plan. Adoption is without change from the

proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 816). The text of the rule will not be republished.

This amended rule adoption will allow the State Board, on a case-by-case basis, to grant a waiver to allow an eligible landowner to receive another cost-share under specific circumstances. Determinations for another cost-share will be made for continued implementation of best management practices to address nonpoint source pollution in areas of the state with potential and/or identified problems.

No comments were received regarding the adoption of this rule.

The amended rule is adopted under §201.020, Agriculture Code, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 6, 2005.

TRD-200501460

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: April 26, 2005

Proposal publication date: February 18, 2005

For further information, please call: (254) 773-2250



## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

##### **SUBCHAPTER F. MOTOR VEHICLE SALES TAX**

###### **34 TAC §3.74**

The Comptroller of Public Accounts adopts an amendment to §3.74, concerning seller responsibility, without changes to the proposed text as published in the February 11, 2005, issue of the *Texas Register* (30 TexReg 646).

This amendment implements House Bill 2424, 78th Legislature, 2003. This legislation added Tax Code §152.106 providing for the prohibition of certain advertising and penalties. A new subsection (h) is added to address the change.

No comments were received regarding adoption of the amendment.

This section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amended section implements Tax Code, §152.106.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2005.

TRD-200501484

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: May 1, 2005

Proposal publication date: February 11, 2005

For further information, please call: (512) 475-0387



## **SUBCHAPTER GG. INSURANCE TAX**

### **34 TAC §3.809**

The Comptroller of Public Accounts adopts an amendment to §3.809, concerning due dates, penalty and interest, and overpayments, without changes to the proposed text as published in the February 4, 2005, issue of the *Texas Register* (30 TexReg 509).

The amendment specifically addresses the penalty and interest applicable to late payments and underpayments to conform with changes in interest calculation in Tax Code, Title 2.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Insurance Code, Article 4.10, §6(b), Article 4.11, §13, and Article 9.59, §3(b), and Tax Code, Title 2, Subtitles A and B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200501485

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

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Proposal publication date: February 4, 2005

For further information, please call: (512) 475-0387



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 3. TEXAS YOUTH COMMISSION**

#### **CHAPTER 91. PROGRAM SERVICES**

##### **SUBCHAPTER D. HEALTH CARE SERVICES**

###### **37 TAC §91.99**

The Texas Youth Commission (the commission) adopts the repeal of §91.99, concerning Medical Admissions for Al Price State Juvenile Correctional Facility, without changes to the proposal as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 816).

The justification for the repeal is the publication of a significantly revised rule. Notice of adoption of the new rule can be found in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2005.

TRD-200501462

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: April 27, 2005

Proposal publication date: February 18, 2005

For further information, please call: (512) 424-6014



### 37 TAC §91.99

The Texas Youth Commission (the commission) adopts new §91.99, concerning Medical Admissions for Al Price State Juvenile Correctional Facility, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 817).

The new rule will provide greater consistency and clarity regarding the process for admitting youth to the Medical Recovery Dorm at the Al Price State Juvenile correctional facility.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.076, which provides the commission with the authority to provide any medical treatment that is necessary for youth in its care.

The adopted rule implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2005.

TRD-200501461

Dwight Harris

Executive Director

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Effective date: April 27, 2005

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## CHAPTER 99. GENERAL PROVISIONS

### SUBCHAPTER C. MISCELLANEOUS

### 37 TAC §99.90

The Texas Youth Commission (the commission) adopts an amendment to §99.90, concerning Vehicle Fleet Management, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 818). The justification for the amendment is compliance with the Office of Vehicle Fleet Management's *State Vehicle Fleet Management Plan*.

The amended rule provides clarity regarding use of pooled vehicles and personal vehicles and assigns responsibility for compiling and reporting the annual Fleet Operations Indirect Costs report to Texas Building and Procurement Commission.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resources Code, §61.034.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2005.

TRD-200501463

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: April 27, 2005

Proposal publication date: February 18, 2005

For further information, please call: (512) 424-6014



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

#### CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

#### SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES

#### DIVISION 4. PURCHASE OF GOODS AND SERVICES

The Texas Health and Human Services Commission adopts the repeal and replacement of Title 40, Part 2, §101.4527, the rules of the Department of Assistive and Rehabilitative Services, concerning purchase of goods and services for Rehabilitation Services, without changes to the proposed text as published in the February 25, 2005, issue of the *Texas Register* (30 TexReg 1050) and will not be republished.

The repeal and new section are being adopted to update the schedule of rates the Commission will pay for medical services

for rehabilitation services for 2005, and to conform procedures for adopting the updated rates to the requirements of House Bill 2292, 78th Legislature, Regular Session.

No comments were received regarding the adoption of the repeal and new section.

#### **40 TAC §101.4527**

The repeal is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2005.

TRD-200501466

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: April 27, 2005

Proposal publication date: February 25, 2005

For further information, please call: (512) 424-6900

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**40 TAC §101.4527**

The new section is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2005.

TRD-200501467

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: April 27, 2005

Proposal publication date: February 25, 2005

For further information, please call: (512) 424-6900  
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# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Adopted Rule Review

Texas Workers' Compensation Commission

### Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, §9-10, 76th Legislature, and Texas Government Code §2001.039 as added by Senate Bill 178, 76th Legislature, and pursuant to the notice of intention to review published in the December 24, 2004, issue of the *Texas Register* (29 TexReg 11990), the Texas Workers' Compensation Commission (the commission) has assessed whether the reason for adopting or readopting the rule continues to exist. No comments were received regarding the review of the rule.

As a result of the review, the Commission has determined that the reason for adoption of the rule continues to exist. Therefore, the Commission readopts Chapter 104. If the Commission determines that the

chapter should be revised or repealed, the repeal or revisions of the chapter will be accomplished in accordance with the Administrative Procedure Act.

### CHAPTER 104. GENERAL PROVISIONS--RULE-MAKING

#### §104.1. Contents of Rule-Making Petitions.

TRD-200501473

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: April 8, 2005



# TABLES & GRAPHICS

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

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Figure: 22 TAC §51.3(b)

## **PENALTIES FOR PRACTICE AND PROCEDURES VIOLATIONS**

### **CATEGORY I**

#### **Not To Exceed The Following Amounts**

**1st: \$750**

**2nd: \$850**

**3rd: \$1000**

#### **Violation**

#### **Reference**

Unlicensed Barber School

TEX. OCC. CODE ANN. §1601.351

Enrolling Prior to Approval

TEX. OCC. CODE ANN. §1601.356

Unapproved Location Change

TEX. OCC. CODE ANN. §1601.554

### **CATEGORY II**

#### **Not To Exceed The Following Amounts**

**1st: \$500**

**2nd: \$750**

**3rd: \$1000**

#### **Violation**

#### **Reference**

Registered Name/Location

TEX. OCC. CODE ANN. §1601.301

Certificate, License or Permit Required

TEX. OCC. CODE ANN. §1601.251

Unlicensed Barber Shop

TEX. OCC. CODE ANN. §1601.301

Unlawful Health Certificate

TEX. OCC. CODE ANN. §1601.701

Footspa Sanitation

TEX. OCC. CODE. ANN §1601.152

### **CATEGORY III**

#### **Not To Exceed The Following Amounts**

**1st: \$500**

**2nd: \$750**

**3rd: \$1000**

#### **Violation**

#### **Reference**

Barber Tech Practicing Out of Scope

TEX. OCC. CODE ANN. §1601.256

Manicurist Practicing Out of Scope

TEX. OCC. CODE ANN. §1601.257

Unlicensed Manicure Shop

TEX. OCC. CODE ANN. §1601.304

Gross Malpractice	TEX. OCC. CODE ANN. §1601.601
Knowingly Contagious Disease	TEX. OCC. CODE ANN. §1601.601
Employing Unlicensed Person	TEX. OCC. CODE ANN. §1601.701
Allowing Unlicensed Independent Contractor or Other Person to Engage in Barbering	TEX. OCC. CODE ANN. §1601.701 and RULE §51.91
Obtaining License by Fraud	TEX. OCC. CODE ANN. §1601.701
Misrepresent Enrollment	TEX. OCC. CODE ANN. §1601.562

#### **CATEGORY IV**

##### **Not To Exceed The Following Amounts**

**1st: \$300**

**2nd: \$500**

**3rd: \$750**

<b>Violation</b>	<b>Reference</b>
Sleeping Quarters	TEX. OCC. CODE ANN. §1601.507
False Advertisement "Barbering"	TEX. OCC. CODE ANN. §1601.251
False Advertisement "Barber Pole"	TEX. OCC. CODE ANN. §1601.251
False Statement	TEX. OCC. CODE ANN. §1601.252
False Advertisement	TEX. OCC. CODE ANN. §1601.601
Practicing Under Wrong Name	TEX. OCC. CODE ANN. §1601.601
Refresher Course	TEX. OCC. CODE ANN. §1601.354
Theory Taught	TEX. OCC. CODE ANN. §1601.558
Teacher on Duty	TEX. OCC. CODE ANN. §1601.560
Qualified Instructor	TEX. OCC. CODE ANN. §1601.560
Teacher Instructor Ratio	TEX. OCC. CODE ANN. §1601.560
School Change of Ownership	TEX. OCC. CODE ANN. §1601.554
Increase/Decrease Hours	TEX. OCC. CODE ANN. §1601.558(d)

## **CATEGORY V**

### **Not To Exceed The Following Amounts**

**1st: \$200**

**2nd: \$400**

**3rd: \$500**

#### **Violation**

#### **Reference**

Stop Blood Flow

TEX. OCC. CODE ANN. §1601.506

## **CATEGORY VIA**

### **Not To Exceed The Following Amounts**

**1st: \$100**

**2nd: \$300**

**3rd: \$500**

#### **Violation**

#### **Reference**

Employee with Disease

TEX. OCC. CODE ANN. §1601.505

Expired License

TEX. OCC. CODE ANN. §1601.402

Expired Booth Rental Permit

TEX. OCC. CODE ANN §1601.301  
and RULE §51.97

Allowing Employee or Independent Contractor  
to Engage in Barbering with Expired License

TEX. OCC. CODE ANN §1601.701  
and RULE §51.91

Unlawful Transfer

TEX. OCC. CODE ANN. §1601.308

Proof of Requisites

TEX. OCC. CODE ANN. §1601.252

Employing Cosmetologist

TEX. OCC. CODE ANN. §1601.309

Expired Permit

TEX. OCC. CODE ANN. §1601.408

Allowing Independent Contractor to Engage in  
Barbering with an Expired Booth Rental Permit

TEX. OCC. CODE ANN §1601.701  
and RULE §51.91

Location Change

TEX. OCC. CODE ANN. §1601.310

School Owner Working Chair

TEX. OCC. CODE ANN. §1601.701

School Owner Permitting a Person Other Than  
a Student to Work Chair

TEX. OCC. CODE ANN. §1601.701

**CATEGORY VIB****Not To Exceed The Following Amounts****1st: \$100****2nd: \$300****3rd: \$500****Violation****Reference**

Liquid Sterilizer

TEX. OCC. CODE ANN. §1601.353

Barber School Sign

TEX. OCC. CODE ANN. §1601.553

Expired School License

TEX. OCC. CODE ANN. §1601.407

Course Outline

TEX. OCC. CODE ANN. §1601.556

Student Information

TEX. OCC. CODE ANN. §1601.556

Curriculum Content

TEX. OCC. CODE ANN. §1601.557

Student Cancellation

TEX. OCC. CODE ANN. §1601.562

Violation of Refund Policy

TEX. OCC. CODE ANN. §1601.563

Violate Termination Ratio

TEX. OCC. CODE ANN. §1601.564

Student Re-Entry

TEX. OCC. CODE ANN. §1601.564

Timely Refund

TEX. OCC. CODE ANN. §1601.566

Interest Paid

TEX. OCC. CODE ANN. §1601.566

Incomplete/Re-Entry

TEX. OCC. CODE ANN. §1601.565

**CATEGORY VIC****Not To Exceed The Following Amounts****1st: \$100****2nd: \$200****3rd: \$300****Violation****Reference**

Practice Unlicensed Facility

TEX. OCC. CODE ANN. §1601.453

Cosmetologist Practicing in Barber Shop

TEX. OCC. CODE ANN. §1601.502

Equipment

TEX. OCC. CODE ANN. §1601.504

Combs, Brushes

TEX. OCC. CODE ANN. §1601.506

Sterilize Razor, Shears Clippers, Tweezers

TEX. OCC. CODE ANN. §1601.506

Shave Inflamed Area	TEX. OCC. CODE ANN. §1601.506
Dirty Finger Bowl	TEX. OCC. CODE ANN. §1601.506
Unlawful Location Change	TEX. OCC. CODE ANN. §1601.503
16 Years Old	TEX. OCC. CODE ANN. §1601.253 and §1601.701

#### **CATEGORY VID**

##### **Not To Exceed The Following Amounts**

**1st: \$50                                      2nd: \$100                                      3rd: \$150**

<b>Violation</b>	<b>Reference</b>
Failure to Display	TEX. OCC. CODE ANN. §1601.701
Display of Consumer Complaint	TEX. OCC. CODE ANN. §1601.202
Unlaundered Towel	TEX. OCC. CODE ANN. §1601.506
Dirty Head Rest	TEX. OCC. CODE ANN. §1601.506
Dirty Sponge	TEX. OCC. CODE ANN. §1601.506
No Neck Strip	TEX. OCC. CODE ANN. §1601.506
Failure To Display	TEX. OCC. CODE ANN. §1601.451

#### **CATEGORY VIIA**

##### **Not To Exceed The Following Amounts**

**1st: \$250                                      2nd: \$500                                      3rd: \$1000**

<b>Violation</b>	<b>Reference</b>
All Furniture and Equipment	TEX. OCC. CODE ANN. §1601.506

#### **CATEGORY VIIB**

##### **Not To Exceed The Following Amounts**

**1st: Warning                                      2nd: \$100                                      3rd: \$150**

<b>Violation</b>	<b>Reference</b>
Manager on Duty	TEX. OCC. CODE ANN. §1601.502

Improper Curriculum	TEX. OCC. CODE ANN. §1601.354
Theory/Practical Instruction	TEX. OCC. CODE ANN. §1601.558
2800 Square Feet	TEX. OCC. CODE ANN. §1601.353
Twenty Chairs	TEX. OCC. CODE ANN. §1601.353

## **CATEGORY VIIC**

### **Not To Exceed The Following Amounts**

<b>1st: Warning</b>	<b>2nd: \$100</b>	<b>3rd: \$200</b>
<b>Violation</b>	<b>Reference</b>	
Shop Permit on Display	TEX. OCC. CODE ANN. §1601.501	
Classroom Requirements	TEX. OCC. CODE ANN. §1601.353	
Library Facilities	TEX. OCC. CODE ANN. §1601.353	
Drinking Fountain	TEX. OCC. CODE ANN. §1601.353	
Fire Fighting Equipment	TEX. OCC. CODE ANN. §1601.353	
Student Requirements	TEX. OCC. CODE ANN. §1601.260	
Progress Reports	TEX. OCC. CODE ANN. §1601.561	
Completion Rates	TEX. OCC. CODE ANN. §1601.561	
Job Placement	TEX. OCC. CODE ANN. §1601.561	
Lighting	TEX. OCC. CODE ANN. §1601.353	

## **CATEGORY VIID**

### **Not To Exceed The Following Amounts**

<b>1st: Warning</b>	<b>2nd: \$50</b>	<b>3rd: \$100</b>
<b>Violation</b>	<b>Reference</b>	
Adequate Latherizers	TEX. OCC. CODE ANN. §1601.353	

## **CATEGORY VIIE**

### **Not To Exceed The Following Amounts**

**1st: \$50**

**2nd: \$100**

**3rd: \$150**

#### **Violation**

One Lavatory (Sink) per two chairs

#### **Reference**

TEX. OCC. CODE ANN. §1601.353

## **CATEGORY VIIF**

### **Not To Exceed The Following Amounts**

**1st: \$50**

**2nd: \$100**

**3rd: \$200**

#### **Violation**

Hard Surface Floor

#### **Reference**

TEX. OCC. CODE ANN. §1601.353

## **GENERAL RULES OF PRACTICE AND PRACEDURES**

### **CATEGORY I**

#### **Not To Exceed The Following Amounts**

1st: \$750                      2nd: \$850                      3rd: \$1000

### **CATEGORY II**

#### **Not To Exceed The Following Amounts**

1st: \$500                      2nd: \$750                      3rd: \$1000

<b>Violation</b>	<b>Reference</b>
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Right of Access	§51.6
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### **CATEGORY III**

#### **Not To Exceed The Following Amounts**

1st: \$300                      2nd: \$500                      3rd: \$750

<b>Violation</b>	<b>Reference</b>
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Barber Advertisements (Yellow Pages)	§51.101
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### **CATEGORY IV**

#### **Not To Exceed The Following Amounts**

1st: \$200                      2nd: \$400                      3rd: \$500

### **CATEGORY VA**

#### **Not To Exceed The Following Amounts**

1st: \$100                      2nd: \$300                      3rd: \$500



**CATEGORY VB****Not To Exceed The Following Amounts**

1st: \$100                                      2nd: \$200                                      3rd: \$300

<b>Violation</b>	<b>Reference</b>
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Animals Prohibited	§51.96
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**CATEGORY VC****Not To Exceed The Following Amounts**

1st: \$50                                      2nd: \$100                                      3rd: \$150

<b>Violation</b>	<b>Reference</b>
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Current Address	§51.4
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**CATEGORY VIA****Not To Exceed The Following Amounts**

1st: Warning                                      2nd: \$500                                      3rd: \$1000

**CATEGORY VIB****Not To Exceed The Following Amounts**

1st: Warning                                      2nd: \$300                                      3rd: \$500

<b>Violation</b>	<b>Reference</b>
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Barber School Business Hours	§51.14
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Other Business Prohibited (School or College)	§51.40
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Booth Rental	§51.97
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**CATEGORY VIC****Not To Exceed The Following Amounts**

**1st: Warning                      2nd: \$100                      3rd: \$200**

<b>Violation</b>	<b>Reference</b>
Student Equipment	§51.16
Dress Code	§51.94

**CATEGORY VID****Not To Exceed The Following Amounts**

**1st: Warning                      2nd: \$50                      3rd: \$100**

<b>Violation</b>	<b>Reference</b>
Student Certification	§51.23

**CATEGORY VIE****Not To Exceed The Following Amounts**

**1st: \$25                      2nd: \$50                      3rd: \$100**

<b>Violation</b>	<b>Reference</b>
Other Business Prohibited (Shop)	§53.95

## DISCLOSURE AND CONSENT

### Medical and Surgical Procedures

***TO THE PATIENT: You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.***

I (we) voluntarily request Dr. \_\_\_\_\_ as my physician, and such associates, technical assistants and other health care providers as they may deem necessary, to treat my condition which has been explained to me (us) as:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I (we) understand that the following surgical, medical, and/or diagnostic procedures are planned for me and I (we) voluntarily consent and authorize these procedures:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I (we) understand that my physician may discover other or different conditions which require additional or different procedures than those planned. I (we) authorize my physician, and such associates, technical assistants and other health care providers to perform such other procedures which are advisable in their professional judgment.

I (we) (do) (do not) consent to the use of blood and blood products as deemed necessary.

I (we) understand that no warranty or guarantee has been made to me as to result or cure.

Just as there may be risks and hazards in continuing my present condition without treatment, there are also risks and hazards related to the performance of the surgical, medical and/or diagnostic procedures planned for me. I (we) realize that common to surgical, medical, and/or diagnostic procedures is the potential for infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and even death. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I (we) understand that anesthesia involves additional risks and hazards but I (we) request the use of anesthetics for the relief and protection from pain during the planned and additional procedures. I (we) realize the anesthesia may have to be changed possibly without explanation to me (us).

I (we) understand that certain complications may result from the use of any anesthetic including respiratory problems, drug reaction, paralysis, brain damage or even death. Other risks and hazards which may result from the use of general anesthetics range from minor discomfort to injury to vocal cords, teeth or eyes. I (we) understand that other risks and hazards resulting from spinal or epidural anesthetics include headache and chronic pain.

I (we) have been given an opportunity to ask questions about my condition, alternative forms of anesthesia and treatment, risks of nontreatment, the procedures to be used, and the risks and hazards involved, and I (we) believe that I (we) have sufficient information to give this informed consent.

I (we) certify this form has been fully explained to me (us), that I (we) have read it or have had it read to me (us), that the blank spaces have been filled in, and that I (we) understand its contents.

**PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)**

\_\_\_\_\_  
**DATE:** \_\_\_\_\_ **TIME:** \_\_\_\_\_ **A.M./P.M.**

**WITNESS:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name (Print)**

\_\_\_\_\_  
**Address (Street or P.O. Box)**

\_\_\_\_\_  
**City, State, Zip Code**

## DIVULGACIÓN DE INFORMACIÓN Y CONSENTIMIENTO

### Procedimientos médicos y quirúrgicos

**AL PACIENTE:** *Usted tiene el derecho como paciente a que se le informe sobre su condición y a que se le recomiende el procedimiento quirúrgico, médico o diagnóstico que se utilizará para que, después de conocer los riesgos y peligros involucrados, usted pueda tomar la decisión de seguir con el procedimiento o no. Esta divulgación de información no tiene como propósito el asustarle ni alarmarle; es sencillamente una medida para mejor informarle para que así usted pueda dar o negar su consentimiento al procedimiento.*

Yo solicito (nosotros solicitamos) voluntariamente al (a la) Dr(a). \_\_\_\_\_ como mi médico, y tales socios, ayudantes técnicos, y otros proveedores de atención de salud como ellos estimen necesario, que traten mi condición, la cual se me (se nos) ha explicado como:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que los siguientes procedimientos quirúrgicos, médicos y / o diagnósticos son planificados para mí, y doy (damos) el consentimiento voluntariamente para estos procedimientos y autorizo (autorizamos) estos procedimientos:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que quizá mi médico descubra otras o diferentes condiciones que requerirán procedimientos adicionales o distintos a los ya planificados. Yo autorizo (nosotros autorizamos) que mi médico, y tales socios, ayudantes técnicos y otros proveedores de atención de salud realicen tales procedimientos adicionales que son prudentes en su opinión profesional.

Yo doy (nosotros damos) / Yo no doy (nosotros no damos) consentimiento para el uso de sangre y productos de sangre, como se estime necesario.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que ninguna seguridad ni garantía se me (se nos) ha dado con relación al resultado o a la cura.

Asimismo que podrían haber riesgos y peligros al seguir en mi condición actual sin tratamiento, también hay riesgos y peligros relacionados a la realización de los procedimientos quirúrgicos, médicos y / o diagnósticos planificados para mí. Yo comprendo (nosotros comprendemos) que el potencial para infección, coágulos de sangre en las venas y los pulmones, hemorragia, reacciones alérgicas, y aún muerte, son comunes en los procedimientos quirúrgicos, médicos y / o diagnósticos. Asimismo, yo comprendo (nosotros comprendemos) que podrían ocurrir los siguientes riesgos y peligros con respecto a este procedimiento en particular:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que la anestesia involucra riesgos y peligros adicionales, sin embargo solicito (solicitamos) el uso de agentes anestésicos para el alivio de y la protección contra el dolor durante los procedimientos ya planificados y los procedimientos adicionales. Yo comprendo (nosotros comprendemos) que posiblemente se tendría que cambiar la anestesia sin darme (darnos) explicación.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que ciertas complicaciones podrían resultar de la utilización de todos los agentes anestésicos las cuales pueden incluir problemas respiratorios, reacción a medicamentos, parálisis, daño cerebral, o aún muerte. Otros riesgos y peligros que podrían resultar de la utilización de agentes anestésicos generales varían de molestia leve hasta daño a las cuerdas vocales, los dientes, o los ojos. Entiendo y acepto (entendemos y aceptamos) que otros riesgos y peligros que resultan del uso de agentes anestésicos espinales o epidurales incluyen dolores de cabeza y dolor crónico.

Se me (se nos) ha dado una oportunidad de hacer preguntas sobre mi condición, las clases de alternativas de anestesia y de métodos alternativos de tratamiento, los riesgos si no se recibe tratamiento, los procedimientos que se utilizarán y los riesgos y peligros involucrados en ellos, y que según mi (nuestro) leal saber y entender yo tengo (nosotros tenemos) la información suficiente para dar este consentimiento consciente.

Yo afirmo (nosotros afirmamos) que se me (se nos) explicó este formulario en su totalidad y que lo he (hemos) leído o que se me (se nos) ha leído, que se han llenado los espacios en blanco, y que entiendo y acepto (entendemos y aceptamos) su contenido.

**FIRMA DEL PACIENTE / OTRA PERSONA LEGALMENTE RESPONSABLE (firma requerida)**

\_\_\_\_\_  
**FECHA:** \_\_\_\_\_ **HORA:** \_\_\_\_\_ **A.M./P.M**

**TESTIGO:**

\_\_\_\_\_  
**Firma**

\_\_\_\_\_  
**Nombre (letra de molde)**

\_\_\_\_\_  
**Dirección (Calle o Apartado Postal)**

\_\_\_\_\_  
**Ciudad, Estado, Código Postal**

## DISCLOSURE AND CONSENT FOR RADIATION THERAPY

*As a patient, you have the right to be informed about your condition and the recommended radiation therapy procedure to be used to treat your condition. This disclosure is not meant to alarm you; however, there are certain risks which are associated with radiation therapy. This explanation is intended to inform you of those risks so that you may give or withhold your consent to the recommended procedure on an informed basis. Please carefully review the following and if you choose to proceed with this treatment, sign this consent in the space below:*

I (we) hereby voluntarily request and authorize Dr. \_\_\_\_\_ as my physician, and such associates, technicians and the health care providers as they may deem necessary to treat my condition which has been explained to me (us) as:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I (we) understand that my condition may be treated with external beam radiation therapy alone, with internal radiation implant alone or with both or in planned combination with surgery and/or chemotherapy.

I (we) understand that the following radiation therapy procedure(s) are planned for me and I (we) consent to and authorize these procedure(s) (specify technique and site):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

I (we) further authorize the taking of photographs or placing of tattoo or skin marks necessary for treatment.

**ALL FEMALES MUST COMPLETE:** I (we) understand that radiation can be harmful to the unborn child.

☐ I am      ☐ I could be      ☐ I am not      pregnant.

I (we) understand that there may be side-effects or complications from radiation therapy, either during or shortly after the course of treatment ("early reactions"), or some time later ("late reactions"). Any of the side-effects or complications may be temporary or permanent.

These reactions may be worsened by chemotherapy or surgery before, during or after radiation therapy or by previous radiation therapy to the same area. Early and late reactions which could occur as a result of the procedure(s) are listed below. With few exceptions, these reactions affect only the areas actually receiving radiation therapy.

(Place list(s) for specific region or regions of the body receiving radiation therapy here. A single form may be used for multiple regions or a separate form may be used for each separate region.)

The nature and purpose of the proposed procedure, the alternative methods of treatment, and the risks and hazards if treatment is withheld have been explained to me (us) by my physician. I (we) have had an opportunity to discuss these matters with my physician and to ask questions about my condition, alternative methods of treatment and the proposed procedure(s). I (we) understand that no warranty or guarantee has been made to me (us) as to result or cure.

**PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)**

\_\_\_\_\_  
**DATE:** \_\_\_\_\_ **TIME:** \_\_\_\_\_ **A.M./P.M.**

**WITNESS:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name (Print)**

\_\_\_\_\_  
**Address (Street or P. O. Box)**

\_\_\_\_\_  
**City, State, Zip Code**



## DIVULGACIÓN DE INFORMACIÓN Y CONSENTIMIENTO PARA RADIOTERAPIA

*Como paciente, usted tiene el derecho a que se le informe sobre su condición y el procedimiento de radioterapia que se recomienda utilizar para tratar su condición. Esta divulgación de información no tiene como propósito el alarmarle; sin embargo, hay ciertos riesgos que son asociados con la radioterapia. Esta explicación tiene el propósito de informarle sobre esos riesgos para que usted pueda dar o denegar su consentimiento al procedimiento recomendado de una base informada. Favor de revisar cuidadosamente lo siguiente, y si usted elige seguir con este tratamiento, firme este consentimiento en el espacio de abajo:*

Yo (nosotros), por este medio, voluntariamente solicito (solicitamos) y autorizo (autorizamos) al (a la) Dr(a). \_\_\_\_\_ como mi médico, y tales socios, técnicos, y los proveedores de atención de salud como ellos estimen necesario, que traten mi condición, la cual se me (se nos) ha explicado como:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que mi condición podría ser tratada con la radioterapia externa solamente, con la braquiterapia (radiación interna) solamente o con las dos, o en una combinación planificada con cirugía y / o quimioterapia.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que el (los) siguiente(s) procedimiento(s) radiológico(s) son planificados para mí, y doy (damos) el consentimiento para y autorizo (autorizamos) este (estos) procedimiento(s) (especifique la técnica y el sitio):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Adicionalmente, yo autorizo (nosotros autorizamos) el tomar de fotografías o el poner tatuajes o marcas en la piel que sea necesario para tratamiento.

**TODAS LAS HEMBRAS TIENEN QUE COMPLETAR:** Yo entiendo y acepto (nosotros entendemos y aceptamos) que la radiación puede ser dañina al bebé aún no nacido.

☐ Yo estoy    ☐ Es posible que yo esté    ☐ Yo no estoy        embarazada.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que podría haber efectos secundarios o complicaciones de la radioterapia durante o poco después del curso de tratamiento ("reacciones precoces"), o a cierto tiempo después ("reacciones tardías"). Cualquiera de los efectos secundarios o las complicaciones podrían ser transitorios o permanentes.

Estas reacciones podrían empeorarse por quimioterapia o cirugía antes, durante, o después de la radioterapia, o por radioterapia previa en la misma área. Las reacciones precoces y tardías que podrían ocurrir como resultado del (de los) procedimiento(s) están listadas más abajo. Con pocas excepciones, estas reacciones afectan solamente las áreas realmente sometidas a la radioterapia.

(Ponga aquí lista(s) de la(s) region(es) específica(s) que será(n) sometida(s) a la radioterapia. Se puede utilizar un solo formulario para regiones múltiples, o se puede usar un formulario separado para cada región diferente.)

La naturaleza y el objetivo del procedimiento propuesto, los métodos alternativos de tratamiento, y los riesgos y peligros si el tratamiento es retenido me (nos) han sido explicados por mi médico. Yo he (nosotros hemos) tenido la oportunidad de discutir estos asuntos con mi médico y de hacer preguntas sobre mi condición, los métodos alternativos de tratamiento, y el (los) procedimiento(s) propuesto(s). Yo entiendo y acepto (nosotros entendemos y aceptamos) que ninguna seguridad ni garantía se me (se nos) ha dado con relación al resultado o a la cura.

**FIRMA DEL PACIENTE / OTRA PERSONA LEGALMENTE RESPONSABLE (firma requerida)**

---

**FECHA:** \_\_\_\_\_ **HORA:** \_\_\_\_\_ **A.M./P.M**

**TESTIGO:**

---

**Firma**

---

**Nombre (letra de molde)**

---

**Dirección (Calle o Apartado Postal)**

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**Ciudad, Estado, Código Postal**

## DISCLOSURE AND CONSENT FOR HYSTERECTOMY

**TO THE PATIENT:** *You have the right, as a patient, to be informed about your condition and the recommended surgical, medical, or diagnostic procedure to be used so that you may make the decision whether or not to undergo the procedure after knowing the risks and hazards involved. This disclosure is not meant to scare or alarm you; it is simply an effort to make you better informed so you may give or withhold your consent to the procedure.*

**NOTICE:** Refusal to consent to a hysterectomy will not result in the withdrawal or withholding of any benefits provided by programs or projects receiving federal funds or otherwise affect your right to future care or treatment.

I (we) voluntarily request Dr. \_\_\_\_\_ as my physician, and such associates, technical assistants and other health care providers as they may deem necessary, to treat my condition which has been explained to me (us) as:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I (we) understand that the following surgical, medical, and/or diagnostic procedures are planned for me and I (we) voluntarily consent and authorize these procedures:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I (we) understand that a hysterectomy is a removal of the uterus through an incision in the lower abdomen or vagina. I (we) also understand that additional surgery may be necessary to remove or repair other organs, including an ovary, tube, appendix, bladder, rectum, or vagina.

I (we) understand that the hysterectomy is permanent and not reversible. I (we) understand that I will not be able to become pregnant or bear children. I (we) understand that I have the right to seek a consultation from a second physician.

I (we) understand that my physician may discover other or different conditions which require additional different procedures than those planned. I (we) authorize my physician, and such associates, technical assistants and other health care providers to perform such other procedures, which are advisable in their professional judgment.

I (we) (do) (do not) consent to the use of blood and blood products as deemed necessary. I (we) understand that the following risks and hazards may occur in connection with the use of blood and blood products:

1. Fever
2. Transfusion reaction, which may include kidney failure or anemia
3. Heart failure
4. Hepatitis
5. AIDS (acquired immune deficiency syndrome)
6. Other infections

I (we) understand that no warranty or guarantee has been made to me as to result or cure.

Just as there may be risks and hazards in continuing my present condition without treatment, there are also risks and hazards related to the performance of the surgical, medical, and/or diagnostic procedures planned for me. I (we) realize that common to surgical, medical, and/or diagnostic procedures are the potential for infection, blood clots in veins and lungs, hemorrhage, allergic reactions, and even death. I (we) also realize that the following risks and hazards may occur in connection with this particular procedure (check applicable procedure):

<input type="checkbox"/> <b>ABDOMINAL HYSTERECTOMY</b> 1. Uncontrollable leakage of urine 2. Injury to the bladder. 3. Sterility. 4. Injury to the tube (ureter) between the kidney and the bladder. 5. Injury to the bowel and/or intestinal obstruction.	<input type="checkbox"/> <b>VAGINAL HYSTERECTOMY *</b> 1. Uncontrollable leakage of urine. 2. Injury to the bladder. 3. Sterility. 4. Injury to the tube (ureter) between the kidney and the bladder. 5. Injury to the bowel and/or intestinal obstruction. 6. Completion of operation by abdominal incision.
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\* For **LAPROSCOPICALLY ASSISTED VAGINAL HYSTERECTOMY**, the additional risks include: damage to intra-abdominal structures (e.g. bowel, bladder, blood vessels, or nerves); intra-abdominal abscess and infectious complications; trocar site complications (e.g., hematoma/bleeding, leakage of fluid, or hernia formation); conversion of the procedure to an open procedure; cardiac dysfunction.

**ADDITIONAL COMMENTS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I (we) understand that anesthesia involves additional risks and hazards but I (we) request the use of anesthetics for the relief and protection from pain during the planned and additional procedures. I (we) realize the anesthesia may have to be changed possibly without explanation to me (us).

I (we) understand that certain complications may result from the use of any anesthetic including respiratory problems, drug reaction, paralysis, brain damage or even death. Other risks and hazards, which may result from the use of general anesthetics, range from minor discomfort to injury to vocal cords, teeth or eyes. I (we) understand that other risks and hazards resulting from spinal or epidural anesthetics include headache and chronic pain.

I (we) have been given an opportunity to ask questions about my condition, alternative forms of anesthesia and treatment, risks of no treatment, the procedures to be used, and the risks and hazards involved, and I (we) believe that I (we) have sufficient information to give this informed consent.

I (we) certify this form has been fully explained to me (us), that I (we) have read it or have had it read to me (us), that the blank spaces have been filled in, and that I (we) understand its contents.

**NAME OF PHYSICIAN EXPLAINING PROCEDURE:** \_\_\_\_\_

**NAME OF PERSON PROVIDING MATERIALS:** \_\_\_\_\_

**PATIENT/OTHER LEGALLY RESPONSIBLE PERSON (signature required)**

\_\_\_\_\_

**DATE:** \_\_\_\_\_ **TIME:** \_\_\_\_\_ **A.M./P.M.**

**WITNESS:**

\_\_\_\_\_

**Name (Print)**

\_\_\_\_\_

**Address (Street or P.O. Box)**

\_\_\_\_\_

**City, State, Zip Code**

\_\_\_\_\_

## **DIVULGACIÓN DE INFORMACIÓN Y CONSENTIMIENTO PARA HISTERECTOMÍA**

***AL PACIENTE:*** Como paciente, usted tiene el derecho a que se le informe sobre su condición y a que se le recomiende el procedimiento quirúrgico, médico o diagnóstico que se utilizará para que, después de conocer los riesgos o peligros involucrados, usted pueda tomar la decisión de seguir con el procedimiento o no. Esta divulgación de información no tiene como propósito el asustarle ni alarmarle; es sencillamente una medida para mejor informarle y así usted pueda dar o negar su consentimiento al procedimiento.

**AVISO:** El negar dar consentimiento a la histerectomía no resultará en el retirar ni en la retención de ningunos de los beneficios proporcionados por programas o proyectos que reciben fondos federales, ni tampoco le afectará de ninguna manera su derecho a la atención o al tratamiento en el futuro.

Yo solicito (nosotros solicitamos) voluntariamente que el (la) Dr(a). \_\_\_\_\_ como mi médico, y tales socios, ayudantes técnicos, y otros proveedores de atención de salud como ellos estimen necesario, traten mi condición, la cual se me (se nos) ha explicado como:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que los siguientes procedimientos quirúrgicos, médicos y / o diagnósticos son planificados para mí, y doy (damos) el consentimiento voluntariamente para estos procedimientos y autorizo (autorizamos) estos procedimientos:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que una histerectomía es la extirpación del útero a través de una incisión en el abdomen inferior o a través de la vagina. Además entiendo y acepto (entendemos y aceptamos) que podría ser necesaria una cirugía adicional para extirpar o componer otros órganos, inclusive un ovario, una trompa de Falopio, el apéndice, la vejiga, el recto, o la vagina.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que la histerectomía es permanente e irreversible. Entiendo y acepto (entendemos y aceptamos) que no podré embarazarme ni dar a luz. Entiendo y acepto (entendemos y aceptamos) que tengo el derecho a procurar una consulta de un segundo médico.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que quizá mi médico descubra otras o diferentes condiciones que requerirán procedimientos adicionales distintos a los ya planificados. Yo autorizo (nosotros autorizamos) que mi médico, y tales socios, ayudantes técnicos y otros proveedores de atención de salud realicen tales procedimientos adicionales que son prudentes en su opinión profesional.

Yo doy (nosotros damos) / Yo no doy (nosotros no damos) consentimiento para el uso de sangre y productos de sangre, como se estime necesario. Entiendo y acepto (entendemos y aceptamos) que los siguientes riesgos y peligros podrían ocurrir con relación a la utilización de sangre y productos de sangre:

1. Fiebre
2. Reacción a la transfusión, que podría incluir insuficiencia renal o anemia
3. Insuficiencia cardíaca
4. Hepatitis
5. SIDA (Síndrome inmunodeficiencia adquirida)
6. Otras infecciones

Yo entiendo y acepto (nosotros entendemos y aceptamos) que ninguna seguridad ni garantía se me ha dado con relación al resultado o a la cura.

Asimismo que podrían haber riesgos y peligros al seguir en mi condición actual sin tratamiento, también hay riesgos y peligros relacionados a la realización de los procedimientos quirúrgicos, médicos y / o diagnósticos planificados para mí. Yo comprendo (nosotros comprendemos) que el potencial para infección, coágulos de sangre en las venas y los pulmones, hemorragia, reacciones alérgicas, y aún muerte, son comunes en los procedimientos quirúrgicos, médicos y / o diagnósticos. Asimismo, Yo comprendo (nosotros comprendemos) que podrían ocurrir los siguientes riesgos y peligros con respecto a este procedimiento en particular (marque el procedimiento aplicable):

<input type="checkbox"/> <b>HISTERECTOMÍA ABDOMINAL</b> 1. Goteo no controlable de orina. 2. Daño a la vejiga. 3. Esterilidad. 4. Daño al tubo (uréter) entre el riñón y la vejiga. 5. Daño al intestino y / u obstrucción intestinal.	<input type="checkbox"/> <b>HISTERECTOMÍA VAGINAL *</b> 1. Goteo no controlable de orina. 2. Daño a la vejiga. 3. Esterilidad. 4. Daño al tubo (uréter) entre el riñón y la vejiga. 5. Daño al intestino y / u obstrucción intestinal. 6. Conclusión de la operación a través de una incisión abdominal.
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\* Para **HISTERECTOMÍA VAGINAL ASISTIDA POR LAPAROSCOPIA**, los riesgos adicionales incluyen: daño a las estructuras intra abdominales (por ejemplo: el intestino, la vejiga, los vasos sanguíneos o los nervios); absceso intra abdominal y complicaciones infecciosas; complicaciones en el sitio del trocar (por ejemplo: hematoma / sangrado, escape de líquido, o formación de una hernia); conversión del procedimiento a un procedimiento abierto; disfunción cardíaca.)

**COMENTARIOS ADICIONALES:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Yo entiendo y acepto (nosotros entendemos y aceptamos) que la anestesia involucra riesgos y peligros adicionales, sin embargo solicito (solicitamos) el uso de agentes anestésicos para el alivio de y la

protección contra el dolor durante los procedimientos ya planificados y los procedimientos adicionales. Yo comprendo (nosotros comprendemos) que posiblemente se tendría que cambiar la anestesia sin darme (darnos) explicación.

Yo entiendo y acepto (nosotros entendemos y aceptamos) que ciertas complicaciones podrían resultar de la utilización de todos los agentes anestésicos las cuales pueden incluir problemas respiratorios, reacción a medicamentos, parálisis, daño cerebral, o aún muerte. Otros riesgos y peligros que podrían resultar de la utilización de agentes anestésicos generales varían de molestia leve hasta daño a las cuerdas vocales, los dientes, o los ojos. Entiendo y acepto (entendemos y aceptamos) que otros riesgos y peligros que resultan del uso de agentes anestésicos espinales o epidurales incluyen dolores de cabeza y dolor crónico.

Se me (se nos) ha dado una oportunidad de hacer preguntas sobre mi condición, las clases alternativas de anestesia y métodos alternativos de tratamiento, los riesgos si no se recibe tratamiento, los procedimientos que se utilizarán y los riesgos y peligros involucrados en ellos, y que según mi leal saber y entender tengo (tenemos) la información suficiente para dar este consentimiento consciente.

Yo afirmo (nosotros afirmamos) que se me (se nos) explicó este formulario en su totalidad y que lo he (hemos) leído o que se me (se nos) ha leído, que se han llenado los espacios en blanco, y que entiendo y acepto (entendemos y aceptamos) su contenido.

**NOMBRE DEL MÉDICO QUE EXPLICÓ EL PROCEDIMIENTO:** \_\_\_\_\_

**NOMBRE DE LA PERSONA QUE PROPORCIONÓ LOS MATERIALES:** \_\_\_\_\_

**FIRMA DEL PACIENTE / OTRA PERSONA LEGALMENTE RESPONSABLE (firma requerida)**

\_\_\_\_\_

**FECHA:** \_\_\_\_\_ **HORA:** \_\_\_\_\_ **A.M./P.M**

**TESTIGO:**

\_\_\_\_\_

**Firma**

\_\_\_\_\_

**Nombre (letra de molde)**

\_\_\_\_\_

**Dirección (Calle o Apartado Postal)**

\_\_\_\_\_

**Ciudad, Estado, Código Postal**



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Texas Department of Agriculture

### Notice of Public Hearing

The Texas Department of Agriculture (department) will hold a public hearing to take public comments on proposed amendments to the Texas Capital Fund Program rules, Title 10, Part 1, §255.7, as published by the Office of Rural Community Affairs in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1891). The Texas Capital Fund Program is administered by the department.

The hearing will be held on Wednesday, April 27, 2005, beginning at 1:30 p.m. in Room 1-100 of the William B. Travis State Office Building, 1701 North Congress, Austin, Texas.

For more information, please contact Karl Young, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 936-0281.

TRD-200501518

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: April 12, 2005

## Texas Building and Procurement Commission

### Request for Proposals

Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of **Request for Proposals (RFP) #303-5-10925**. TBPC seeks a five to ten year lease of approximately 52,264 square feet of office space in Dallas, Dallas County, Texas.

The deadline for questions is May 4, 2005 and the deadline for proposals is May 11, 2005 at 3:00 P.M. The award date is June 30, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=58410](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58410).

TRD-200501510

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: April 12, 2005

### Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services, announces the issuance of **Request for Proposals (RFP) #303-5-10933**. TBPC seeks

a five to ten year lease of approximately 38,325 square feet of office space in Dallas, Dallas County, Texas.

The deadline for questions is May 4, 2005 and the deadline for proposals is May 11, 2005 at 3:00 P.M. The award date is June 30, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the revised RFP may be downloaded from the Electronic State Business Daily at [http://esbd.tbpc.state.tx.us/1380/bid\\_show.cfm?bidid=58413](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58413).

TRD-200501512

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: April 12, 2005

## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 1, 2005, through April 7, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 13, 2005. The public comment period for these projects will close at 5:00 p.m. on May 13, 2005.

### FEDERAL AGENCY ACTIONS:

**Applicant: James A. Whitson;** Location: The proposed surface location of the well is located in State Tract (ST) 126, adjacent to Atkinson Island, in Galveston Bay, Chambers County, Texas. The well can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 310682.48; Northing: 3279302.48. Project Description: The proposed project plans are a revision of project plans that were previously published on public notice on 1 February 2005. The original plans had the surface location in ST-125; the applicant will have the same bottom hole location, but the surface location is now in ST-126. The applicant

proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling and production activities for the ST-125 Well No. 1. This activity consists of the permanent placement of a 30-foot by 7-foot well platform and a 70-foot by 70-foot production platform, with an 8-inch flowline jetted or trenched between the two. During drilling operations the applicant will place 2,667 cubic yards of shell, gravel, or crushed rock for the marine barge pad. CCC Project No.: 05-0223-F1; Type of Application: U.S.A.C.E. permit application #23638(Rev) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: GB Biosciences;** Location: The project is located within and along Greens Bayou, near the intersection of the Sam Houston Toll Way and Interstate 10, in Houston, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Jacinto City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 289706; Northing: 3293524. Project Description: The applicant proposes to dredge approximately 553,000 cubic yards of sediment from 35 acres of Greens Bayou, excavate approximately 15,000 cubic yards of sediment from 2,650 linear feet, 2 acres, of the lower portion of the Harris County Flood Control District (HCFCD) ditch adjacent to Greens Bayou, fill 0.3 acre of wetlands for the construction of a dredge material placement area within the Wah Chang Tract, excavate approximately 1.5 acres for a sediment borrow source, fill 0.5 acre of wetlands for the construction of an access road, and cap with cement 2,650 linear feet, 2 acres, of the lower portion of the HCFCD ditch. The project purpose is to complete the settlement agreement, where the applicant agreed to implement and perform certain sediment management actions within Greens Bayou and the HCFCD ditch to address historic DDT releases in the bayou. CCC Project No.: 05-0224-F1; Type of Application: U.S.A.C.E. permit application #23735 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501502

Larry L. Laine

Chief Clerk, Deputy Land Commissioner, General Land Office  
Coastal Coordination Council

Filed: April 12, 2005

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/18/05 - 04/24/05 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 04/18/05 - 04/24/05 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200501503

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 12, 2005

## Texas Council for Developmental Disabilities

### Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to establish one Teacher Preparation for Inclusive Education project. This project will demonstrate the redesigning of coursework for teacher preparation and continuing education that will prepare educators to teach a very diverse population of students. This demonstration project will work with at least one university in the state in a collaborative effort to redesign university coursework to provide comprehensive training on how to teach all students together. This comprehensive training will include: (1) general education and special education teacher and administrator candidates in both standard teacher programs and alternative certification program(s); (2) university instructors and deans; and (3) K-12 teachers and school administrators. The project will also be expected to work closely with the State Board of Educator Certification (SBEC) to ensure that the curriculum meets or exceeds teacher standards required for special and general education.

Funding of up to \$200,000 per year for up to three years is available for this project. TCDD reserves the right to award funding for two additional years (years four and five). Funds are awarded on an annual basis with continuation funding evaluated yearly. Non-federal matching funds of at least 10% of total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this request for proposal or more information about TCDD may be obtained through TCDD's web site at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP should be directed to Sharon Pratscher, Planning Specialist, at (512) 437-5412 (voice), (512) 437-5431 (TDD), or E-mail [Sharon.Pratscher@tcdd.state.tx.us](mailto:Sharon.Pratscher@tcdd.state.tx.us).

The application packet may be obtained on TCDD's web site or can be in writing by U.S. mail, fax or E-mail from Barbara Booker, Texas Council for Developmental Disabilities, 6201 E. Oltorf Street, Suite 600, Austin, TX 78741-7509; fax number (512) 437-5434; E-mail address [Barbara.Booker@tcdd.state.tx.us](mailto:Barbara.Booker@tcdd.state.tx.us). Applications must be requested in writing unless downloaded from the Internet.

**Deadline: All proposals must be received by TCDD not later than 4:00 PM, Central Daylight Savings Time, on July 29, 2005, or, if mailed, postmarked prior to midnight on the date specified above.** Proposals may be delivered by hand or mailed to the TCDD office at 6201 East Oltorf, Suite 600, Austin, TX 78741-7509. Faxed proposals cannot be accepted.

**Proposals will not be accepted after the due date.**

Grant Proposers' Workshops:

The Texas Council for Developmental Disabilities will conduct telephone conferences or workshop(s) to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at <http://www.txddc.state.tx.us> for a schedule of conference calls or workshops for this RFP.

TRD-200501515

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: April 12, 2005



**East Texas Council of Governments**

**Public Notice**

The East Texas Council of Governments (ETCOG) is a political sub-division of the State of Texas governing the 14 county Uniform Planning Region 6, is soliciting proposals for independent audit services for fiscal year 2004 - 2005.

Audit will cover federal and state grants and all other programs administered by ETCOG for the twelve-month fiscal year ending September 30, 2005. Audit must comply with the Single Audit Act and related amendments as well as applicable Office of Management and Budget Circulars.

Potential respondents may request to obtain a copy of the RFP after April 21, 2005. The deadline for receipt of proposals will be 5:00 p.m. Thursday, May 12, 2005.

Persons or organizations wishing to obtain a copy of the RFP should request by letter, email or by phone. Request letters should be addressed to Judy Durland, CPA, Director of Finance, East Texas Council of Governments, 3800 Stone Road, Kilgore Texas 75662. Phone calls should be made to (903) 984-8641 or email at [judy.durland@twc.state.tx.us](mailto:judy.durland@twc.state.tx.us).

TRD-200501519

Ann Reed

Administrative Assistant

East Texas Council of Governments

Filed: April 12, 2005



**Texas Education Agency**

**Request for Applications Concerning Improving Student Achievement in Mathematics through Professional Development Partnerships Grants**

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-05-006 from eligible partnerships. An eligible partnership shall include 1) a mathematics department of an institution of higher education (IHE); and 2) a high-need local education agency (LEA). The partnership may also include 1) another mathematics or teacher training department of an IHE; 2) additional LEAs, public charter schools, public or private elementary schools or secondary schools, or a consortium of such schools; 3) a business; or 4) a nonprofit or for-profit organization of demonstrated effectiveness in improving the quality of mathematics teachers. The fiscal agent (i.e., applicant) must be either the IHE (on behalf of the mathematics department) or the high-need LEA. A high-need LEA is

defined as a public school district or open-enrollment charter school that meets the following criteria: 1) at least 40 percent of the student population participating in the free or reduced-price lunch program, and 2) a passing rate below the state passing rate, at any grade level, for the mathematics portion of the 2005 Texas Assessment of Knowledge and Skills. Priority will be given to applicants that include regional education service centers as partners. Each LEA and campus included in a shared services arrangement must be considered high need according to the criteria listed for a high-need LEA.

**Description.** The purpose of this program is to establish partnerships that include a minimum of one high-need LEA and a mathematics department of an IHE to create a professional development plan to enhance the implementation of the revised Texas Essential Knowledge and Skills for mathematics adopted by the State Board of Education in February 2005, and/or provide training in the use of intervention programs and strategies for struggling students in mathematics. The grant project timeline for professional development must address time allocated for progress monitoring to ensure teacher implementation of training received. Teachers currently teaching mathematics at Grades K-12 at participating high-need campuses are eligible for project participation. Funds may also be used for the recruitment and retention of mathematics teachers. Professional development activities should be planned and implemented based on a comprehensive assessment of district teacher quality and professional development needs with respect to the teaching and learning of mathematics.

**Dates of Project.** The Improving Student Achievement in Mathematics through Professional Development Partnerships Grants will be implemented during the 2005-2006 school year. Applicants should plan for a starting date of no earlier than August 15, 2005, and an ending date of no later than August 31, 2006.

**Project Amount.** Each project will receive a maximum of \$150,000 for the 2005-2006 school year. This project is funded 100 percent from Title II, Part A and Title II, Part B federal funds.

**Selection Criteria.** Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

**Requesting the Application.** A complete copy of RFA #701-05-006 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing [dcc@tea.state.tx.us](mailto:dcc@tea.state.tx.us). Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://www.tea.state.tx.us/opge/disc/index.html> for viewing and downloading.

**Further Information.** For clarifying information about the RFA, contact Paula Moeller, Division of Curriculum, TEA, (512) 463-9581.

In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any additional information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://www.tea.state.tx.us/opge/disc/index.html>.

**Deadline for Receipt of Applications.** Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, June 9, 2005, to be considered for funding.

TRD-200501524

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 13, 2005

## **Texas Commission on Environmental Quality**

### **Enforcement Orders**

An order was entered regarding Midway Armadillo Corporation and H & F Realty, Docket No. 1999-1048-PST-E on 03/29/2005 assessing \$249,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Biggins, Staff Attorney at 210/403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Marlin, Docket No. 2003-0215-MLM-E on 03/29/2005 assessing \$33,282 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at 512/239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank Pokluda dba Time Mart No. 17, Docket No. 2003-0229-PST-E on 03/29/2005 assessing \$3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Garrett Creek Ranch, Inc., Docket No. 2003-0566-PWS-E on 03/29/2005 assessing \$9,237 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Fleet Star Service Center, Inc., Docket No. 2002-0403-AIR-E on 03/29/2005 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Wendy Cooper, Staff Attorney at 817/588-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 2 M Vest, Inc. dba Mason Fast Stop, Docket No. 2003-0322-PST-E on 03/29/2005 assessing \$22,950 in administrative penalties with \$22,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Becky Petty, Staff Attorney at 512/239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Fina Petrochemicals, L.P., Docket No. 2003-1317-AIR-E on 03/29/2005 assessing \$1,944,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Paul Sarahan, Staff Attorney at 512/239-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Deer Creek Ranch, Inc. dba Deer Creek Water Co., Docket No. 2002-0773-PWS-E on 03/29/2005 assessing \$13,110 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lindsay Andrus, Staff Attorney at 512/239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Corsicana, Docket No. 2004-0073-AIR-E on 03/29/2005 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at 512/239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC dba 7 Eleven Nos. 56729, 57611, 57642, 57627, 57640, 57603, 57604, 57609, and 57634, Docket No. 2004-0076-AIR-E on 03/29/2005 assessing \$10,010 in administrative penalties with \$2,002 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mary and Rick Hooper dba Seven Oaks Motel Complex Sewage Treatment Plant, Docket No. 2003-1342-MWD-E on 03/29/2005 assessing \$48,050 in administrative penalties with \$47,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petro-Chemical Transport, Inc., Docket No. 2003-1194-PST-E on 03/29/2005 assessing \$700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at 512/239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke Energy Field Services, L.P., Docket No. 2003-0176-AIR-E on 03/29/2005 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Village Farms, L.P. dba Village Farms of Texas, Docket No. 2004-0256-IWD-E on 03/29/2005 assessing \$5,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding La Gloria Oil And Gas Company, Docket No. 2004-0291-AIR-E on 03/29/2005 assessing \$120,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Angleton, Docket No. 2004-0299-MWD-E on 03/29/2005 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kourosh Khabazian and Millennium Car Care and Sales, Inc., Docket No. 2004-0301-AIR-E on 03/29/2005 assessing \$4,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at 512/239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Davis Iron Works Operations, Ltd., Docket No. 2004-0479-PST-E on 03/29/2005 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Sulphur Services, Ltd., LLP, Docket No. 2004-0486-AIR-E on 03/29/2005 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 713/767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harriet McDaniel dba Break Away Airport, Docket No. 2004-0540-PST-E on 03/29/2005 assessing \$1,125 in administrative penalties with \$225 deferred.

Information concerning any aspect of this order may be obtained by contacting Leila Pezeshki, Enforcement Coordinator at 210/403-4080, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Praxair, Inc., Docket No. 2004-0661-AIR-E on 03/29/2005 assessing \$20,700 in administrative penalties with \$4,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 713/767-3607,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Nacogdoches, Docket No. 2004-0752-AIR-E on 03/29/2005 assessing \$510 in administrative penalties with \$102 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joey Claybar and Ambrose Claybar dba Claybar Construction and the City of West Orange, Docket No. 2004-0785-MSW-E on 03/29/2005 assessing \$1,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fidai Investment Corporation dba Oates Mobil, Docket No. 2004-0807-PST-E on 03/29/2005 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512/239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arshad Mahmood dba Kwik Stop, Docket No. 2004-0822-PST-E on 03/29/2005 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Joya, Docket No. 2004-0831-PWS-E on 03/29/2005 assessing \$660 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Shredder Company, LLC, Docket No. 2004-0847-AIR-E on 03/29/2005 assessing \$3,720 in administrative penalties with \$744 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyondell-Citgo Refining, L.P., Docket No. 2004-0866-AIR-E on 03/29/2005 assessing \$9,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at 512/239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Field Services Management, Inc., Docket No. 2004-0893-AIR-E on 03/29/2005 assessing \$2,650 in administrative penalties with \$530 deferred.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at 512/239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ramrod Enterprises, LLC, Docket No. 2004-0974-AIR-E on 03/29/2005 assessing \$5,500 in administrative penalties with \$1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512/239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noemi Salinas dba El Alto Country Store, Docket No. 2004-0980-PST-E on 03/29/2005 assessing \$7,200 in administrative penalties with \$1,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Emory, Docket No. 2004-1011-PWS-E on 03/29/2005 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cypress Springs WSC South Plant, Docket No. 2004-1015-PWS-E on 03/29/2005 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mauricio Olaya, Enforcement Coordinator at 915/834-4967, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steve Wilson, Docket No. 2004-1017-WQ-E on 03/29/2005 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Cabinets, Inc., Docket No. 2004-1034-IHW-E on 03/29/2005 assessing \$4,182 in administrative penalties with \$836 deferred.

Information concerning any aspect of this order may be obtained by contacting Mac Vilas, Enforcement Coordinator at 512/239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randy C. Matocha dba Star Express Lube, Docket No. 2004-1041-PST-E on 03/29/2005 assessing \$1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at 409/899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Freestone Power Generation, L.P., Docket No. 2004-1048-IWD-E on 03/29/2005 assessing \$2,180 in administrative penalties with \$436 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Best Materials, Inc., Docket No. 2004-1074-WQ-E on 03/29/2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at 512/239-6673, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robbins Chevrolet Company, Docket No. 2004-1115-PST-E on 03/29/2005 assessing \$800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bell County Water Control and Improvement District No. 1, Docket No. 2004-1124-MWD-E on 03/29/2005 assessing \$5,700 in administrative penalties with \$1,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Express Corporation, Docket No. 2004-1158-PST-E on 03/29/2005 assessing \$1,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hilcorp Energy Company, Docket No. 2004-1172-AIR-E on 03/29/2005 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pioneer Natural Resources USA, Inc., Docket No. 2004-1278-AIR-E on 03/29/2005 assessing \$2,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210/403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thuy T Nguyen dba Mr N Market, Docket No. 2004-1301-PST-E on 03/29/2005 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leroy Purser dba Purser Care Care & Grocery, Docket No. 2004-1302-PST-E on 03/29/2005 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mission Resources Corporation, Docket No. 2004-1312-AIR-E on 03/29/2005 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at 512/239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Do's Investment, Inc. dba Galveston Gas & Food Store, Docket No. 2004-1346-PST-E on 03/29/2005 assessing \$525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Sherman, Enforcement Coordinator at 713/767-3624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Azteca Milling, L.P., Docket No. 2004-1375-AIR-E on 03/29/2005 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200501531  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 13, 2005



#### Notice of District Petition

Notice mailed April 12, 2005

TCEQ Internal Control No. 03292005-D01; Argovitz Interests, Ltd. and Texas Investment and Development Company, Inc. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 409 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 170.3187 acres located within Harris County, Texas; and (4) the proposed District is within the corporate limits of the City of Houston, Texas, and is not within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2003- 1110, effective November 25, 2003, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of water, as more particularly

described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$9,760,000.

#### INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687- 4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200501528  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 13, 2005



#### Notice of Intent to Propose City View Road Groundwater Plume Site for Listing on the Texas Superfund Registry and Opportunity for Citizens to Request Public Meeting

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the September 24, 2004, issue of the *Texas Register* (29 TexReg 9218).

In accordance with the Act, §361.184(a), the commission must publish in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list a facility on the state registry of state Superfund sites. With this publication, the TCEQ hereby gives notice of an area that the executive director

has determined is eligible for listing, and which the executive director proposes to list on the state registry. This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published on April 22, 2005, in the *Midland Reporter Telegram*.

The facility proposed for listing is the City View Road Groundwater Plume Site (the site) located in Midland, Midland County, Texas. The geographic coordinates of the site are 31 degrees 59 minutes 25.91 seconds North Latitude and -102 degrees 2 minutes 43.79 seconds West Longitude. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System. The Hazard Ranking System is the principal screening guide used by the TCEQ to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The description may change as additional information is gathered on the sources and extent of contamination. The site was evaluated to have a Hazard Ranking System score of 7.06.

The site is located northwest of the intersection of Interstate Highway 20 and State Highway 158 in the City View Road area in Midland, Texas. The groundwater at the site is contaminated with perchloroethylene (also known as tetrachloroethylene), petroleum hydrocarbons, and additives. The source of perchloroethylene is unknown and the area of the contaminated plume is not completely defined. The impacted water wells are clustered near Cloverdale Road, Fairgrounds Road, and City View Road. The site is comprised of private homes, trailers, and a few scattered small businesses.

The City View Road groundwater plume was discovered in 2003 during an investigation of a crude oil spill from a pipeline leak. Water sample analysis indicated the presence of benzene contamination. During All American Pipeline's investigation in June and July of 2003, wells exhibited detectable concentrations of methyl ethyl ketone, perchloroethylene, carbon disulfide, tetrahydrofuran, and trichlorofluoromethane.

A public meeting may be requested regarding the proposed listing of the City View Road Groundwater Plume site on the state Superfund registry. The public meeting must be requested by submitting a written request by 5:00 p.m., on May 26, 2005. Interested parties may submit a written request for a public meeting or may submit written comments to the commission relative to the proposed listing of the site to the attention of Mr. Subhash C. Pal, P.E., Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450.

If a public meeting is requested regarding the proposed listing of this facility on the state registry, the commission shall publish general notice of the date, time, and location of the public meeting in the *Texas Register* and in the *Midland Reporter Telegram*. The public meeting notice shall be provided not later than the 31st day before the date of the meeting. If a public meeting is requested, it will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Government Code, Chapter 2001).

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Midland College Library, Murray Fasken Learn Resource Center, 3600 North Garfield, Midland Texas, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920.

Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information about this site or the proposed listing, please call John Flores, TCEQ Community Relations Section, at (800) 633-9363, extension 5674.

TRD-200501506

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 12, 2005



## Notice of Water Quality Applications

The following notices were issued during the period of March 30, 2005 through April 12, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

GEORGE AIVAZIAN has applied for a renewal of TPDES Permit No. 12427-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000 gallons per day. The facility is located at 1910 Highway 6 South in the City of Houston in Harris County, Texas.

AQUA UTILITIES, INC. has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 11419-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 200 feet south of Lake Conroe, approximately 5,500 feet north of Kleimann Lane, approximately 5,000 feet west of Lewis Creek Reservoir, and approximately 7,000 feet north of the intersection of Long Street and Farm-to-Market Road 1097 in Montgomery County, Texas.

CELANESE LTD. which operates the Bay City Plant which manufactures organic chemicals, has applied for a major amendment to TPDES Permit No. WQ0000455000 to authorize the discharge of hydrostatic test discharge water via Outfall 001; replace the fecal coliform effluent limitations at Outfall 001 with residual chlorine effluent limitations monitored after the domestic wastewater treatment plant; and to decrease the monitoring frequency for total copper, total nickel, and total zinc from once per week to once per month. The current permit authorizes the discharge of treated domestic wastewater treatment plant; and treated process wastewater from the neutral effluent treatment (NET) system, treated utility wastewater, storm water, groundwater recovered during site excavations, storm water from the old dewatering area and from landfill cells, groundwater from the bailing of monitor wells, and groundwater from recovery wells at a daily average flow not to exceed 2,280,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located nine miles southwest of the City of Bay City on Farm-to-Market Road 3057 and approximately two miles east of Farm-to-Market Road 2668, Matagorda County, Texas.

CREEK PARK CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014556001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 6,100 gallons per day. The facility is located 0.75 mile south of the intersection of



Farm-to-Market Road 917 and Farm-to-Market Road 1902, approximately 1/4 mile west of the intersection of Pleasant Oaks Road and County Road 1022 and approximately 2 miles east-southeast of the City of Joshua in Johnson County, Texas.

DEGUSSA ENGINEERED CARBONS, L.P. which operates the Baytown Carbon Black Plant, a carbon black manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0000737000, which authorizes the discharge of storm water commingled with treated domestic sewage, washdown water, and utility water on an intermittent and flow variable basis via Outfall 001. The facility is located at 9300 Baytown Road, south of Interstate Highway 10, bounded by Cedar Bayou Tidal on the east and by the Southern Pacific Railroad tracks on the west, approximately five miles northeast of the City of Baytown, Harris County, Texas.

DUVAL COUNTY CONSERVATION AND RECLAMATION DISTRICT has applied for a major amendment to TCEQ Permit No. 10067-001 to authorize a change in the method of discharge of treated domestic wastewater from irrigation to discharge into Waters of the State at a daily average flow not to exceed 250,000 gallons per day. The existing permit authorizes the permittee to dispose of treated wastewater via surface irrigation of non-public access grassland at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1.5 miles east of the City of Benavides on the north side of Farm-to-Market Road 2298 in Duval County, Texas.

CITY OF FALLS CITY has applied for a renewal of TPDES Permit No. 10398-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located approximately 600 feet northwest of the intersection of Panna Maria Street and Maverick Street in the City of Falls City in Karnes County, Texas.

FORT DAVIS WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 10971-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 123,000 gallons per day. The facility is located one mile south of State Highway 17, approximately 500 feet north of Cemetery Road and 0.5 mile east of Fort Davis in Jeff Davis County, Texas.

THE GRAND LAKE UTILITY COMPANY, INC. has applied for a renewal of TPDES Permit No. 14305-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day. The facility is located approximately 3.5 miles east-northeast of the intersection of Farm-to-Market Road 149 and Farm-to-Market Road 1488; approximately 4,200 feet west of the intersection of Stapleton Road and Superior Road; and, approximately 500 feet north of Stapleton Road in Montgomery County, Texas.

CITY OF HONDO has applied for a renewal of TPDES Permit No. 10189-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located in the southwest section of the City of Hondo, approximately 1,400 feet east of the intersection of Farm-to-Market Road 462 and 30th Street in Medina County, Texas.

LA JOYA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 13523-006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,570 gallons per day. The facility is located on Farm-to-Market Road 886, approximately 0.4 mile south of the intersection of U.S. Highway 83 and Farm-to-Market Road 886 in Hidalgo County, Texas.

LMV Management Co., Ltd. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014586001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day.

The facility is located approximately 8,200 feet south of the intersection of Riley Fuzzel Road and Woodsons Gully in Montgomery County, Texas.

MEMORIAL VILLAGES WATER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0010584001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,050,000 gallons per day. The facility is located approximately 1500 feet south by southwest of the San Felipe Drive Bridge where it crosses Buffalo Bayou and approximately 1500 feet south by southeast of the intersection of San Felipe Drive and Farnham Park and east of the terminus of Farnham Park in Harris County, Texas.

NORTHWAY LAND COMPANY, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014604001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 580,000 gallons per day. The facility is located approximately 2,000 feet east of the centerline of Aldine Westfield Road and approximately 1,700 feet north of the intersection of Fountain Brook Park Lane and Trinity Park Lane in Montgomery County, Texas.

NUECES COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 5 has applied for a renewal of TPDES Permit No. 11583-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at the crossing of Banquete Creek and County Road 40, which is approximately 1.25 miles east of Farm-to-Market Road 666 and 0.5 mile south of State Highway 44 near Banquete in Nueces County, Texas.

PRESTO UTILITIES has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014590001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 840,000 gallons per day. The facility is located north of Medina River approximately 1,200 feet west of State Highway 16 and 0.6 mile south of Watson Road in Southwest Bexar County, Texas.

ROLLING CREEK UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. 12841-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 250,000 gallons per day to a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 2,200 feet north of Clay Road and 3,500 feet east of Barker-Cypress Road in Harris County, Texas.

THE SAN ANTONIO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. 10749-004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The current permit also authorizes the land application of sewage sludge for beneficial use on 89.5 acres. The facility and sewage sludge land application site are located approximately 3,500 feet south-southeast of the intersection of Interstate Highway 10 and Farm-to-Market Road 1516 in Bexar County, Texas.

SAN PATRICIO COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. 13644-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located on Main Avenue in the City of Edroy, approximately 3,700 feet south of the intersection of Interstate Highway 37 and State Highway 234 in San Patricio County, Texas.

SYLVESTER MCCAULLEY WATER SUPPLY CORPORATION which proposes to operate a reverse osmosis potable water treatment plant, has applied for a renewal of TPDES Permit No. WQ0004377000, which authorizes the discharge of reverse osmosis

reject wastewater at a daily average flow not to exceed 15,000 gallons per day via Outfall 001. The facility is located on the west side of Farm-to-Market Road 1812, approximately 2,500 feet north of the intersection of U.S. Highway 180 and Farm-to-Market Road 1812, Fisher County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied for a major amendment to Permit No. 11491-001, to authorize a change in treatment process and modify the effluent limit. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via surface irrigation of 15 acres of non-public access grassland, which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located within Lake Arrowhead State Park, approximately 2,000 feet southwest of the intersection of Farm-to-Market Road 2606 and Farm-to-Market Road 1954, approximately 1,000 feet northeast of the Park entrance on Farm-to-Market Road 1954, and approximately 12 miles west-southwest of the City of Henrietta in Clay County, Texas.

TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION has applied for a renewal of TPDES Permit No. 12880-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located approximately 12,000 feet southwest of the point where State Highway 35 crosses Five Mile Branch in Jackson County, Texas.

U.S. DEPARTMENT OF THE ARMY has applied for a renewal of TPDES Permit No. 12074-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,500 gallons per day. The facility is located approximately 3,300 feet east of Farm-to-Market Road 306 and 2,500 feet north of Jacob Creek Park Road in Comal County, Texas.

TRD-200501530  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 13, 2005

◆ ◆ ◆  
**Notice of Water Rights Application**

Notices mailed April 6, 2005 through April 13, 2005.

PROPOSED PERMIT NO. 5869; Sunoco Partners Marketing & Terminals, L.P.-Nederland Marine Terminal, 2300 North Highway 347, Nederland, Texas 77627, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Temporary Water Use Permit pursuant to 11.138, Texas Water Code, and TCEQ Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to divert and use not to exceed 79 acre-feet of water at a maximum diversion rate of 13.39 cfs (6,000 gpm) within a period of two years from the Neches River, Neches River Basin, for industrial (hydrostatic testing) purposes. The water will be returned to the source of the diversion after a period of testing and monitoring. The diversion point will be located at Latitude 30.01 N, Longitude 93.98 W, in the vicinity south of Highway 347, located approximately five miles southeast of the City of Beaumont, County Seat, and two miles northeast of the City of Nederland, in Jefferson County. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on November 8, 2004. Additional fees were received on January 5, 2005 and additional information was received on February 25, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 28, 2005. Written public

comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by April 27, 2005.

APPLICATION NO. 5883; The City of Panorama Village, 99 Hiwon Dr., Panorama Village, Texas, 77304, Applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to maintain and increase the storage capacity of an existing dam and reservoir on East Fork White Oak Creek, tributary of White Oak Creek, tributary of the West Fork San Jacinto, tributary of the San Jacinto River, San Jacinto River Basin, in Montgomery County, for recreation (amenity lake) purposes. The modified reservoir will have an increased storage capacity of 2.5 acre-feet of water with a surface area of 0.5 acre. The reservoir is located in the Francis J. Cook Survey, Abstract No. 118. The midpoint on the centerline of the dam is located at a point bearing N 78.349 W, 7,431 feet from the northeast corner of the James Edwards Survey, Abstract 190, also being at Latitude 30.369 N and Longitude 95.496, approximately 5 miles north-northwest from Conroe, Texas. Ownership of the land inundated by the reservoir is evidenced by a Warranty Deed, dated January 19, 2005, recorded as file number 2005-009457 in the official records of the Montgomery County Clerk. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on February 28, 2005. Additional information was received on March 23, 2005. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on March 24, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5419A; Silverleaf Resorts LTD, 220 Holly Lodge Circle, Big Sandy, Texas 75755, applicant, seeks an amendment to Water Use Permit No. 5419 pursuant to Texas Water Code 11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant owns Water Use Permit No. 5419, which authorizes the owner to maintain two existing dams and reservoirs on Holly Creek and an unnamed tributary of Big Sandy Creek, tributaries of the Sabine River, Sabine River Basin, for in-place recreational purposes in Wood County, Texas. Holly Lake, on Holly Creek, impounds 264 acre-feet of water. Whispering Wind Lake, on an unnamed tributary of Big Sandy Creek, impounds 168 acre-feet of water. Applicant seeks to amend Water Use Permit No. 5419 to divert and use not to exceed 40 acre-feet of water per year from a point on unnamed tributary of Big Sandy Creek for recreational purposes at a maximum diversion rate 0.49 cfs (220 gpm). Water diverted will be released into Whispering Wind Lake and stored, in order to maintain the reservoir full. The diversion point will be located at Latitude 32.721 N and Longitude 95.222 W, also being N 40.75 W, 3,240 feet from the southeast corner of the Brooks and Burleson Survey, Abstract No. 92, 14.5 miles southeast of Quitman in Wood County, Texas. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and partial fees were received on July 2, 2004, and requested information and fees were received on September 7, 2004, and January 4 and March 23, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 29, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

**INFORMATION SECTION**

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200501529

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 13, 2005



### Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 13, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 13, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment

procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Aelina Enterprises, Inc. dba Leander Grocery; DOCKET NUMBER: 2004- 1535-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 14319, Regulated Entity Number (RN) 101496420; LOCATION: Leander, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Commercial Metals Company; DOCKET NUMBER: 2004-1967-AIR-E; IDENTIFIER: Air Account Number EE0068J, RN102412376; LOCATION: Vinton, El Paso County, Texas; TYPE OF FACILITY: scrap and waste materials processing; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to dispense for sale gasoline with an oxygen content of at least 2.7% by weight; PENALTY: \$1,220; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(3) COMPANY: Currey Enterprises, Inc. dba Budget Rentals; DOCKET NUMBER: 2004- 2095-PST-E; IDENTIFIER: PST Registration Number 69406, RN102029352; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c), by failing to monitor underground storage tanks (USTs) for releases and conduct an annual tightness test for pressurized piping and line leak detectors; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414- 3520, (806) 796-7092.

(4) COMPANY: City of Eagle Lake; DOCKET NUMBER: 2004-0939-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 0010505001, RN102181195; LOCATION: Eagle Lake, Colorado County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010505001, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$15,480; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Hank's Roll-Off & Waste Services, Inc.; DOCKET NUMBER: 2005-0100- MSW-E; IDENTIFIER: RN102467347; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: waste collection, recycling, and disposal; RULE VIOLATED: 30 TAC §330.4(a) and (b), by failing to obtain a permit or authorization to process municipal solid waste (MSW) and by transporting MSW for disposal to an unauthorized facility; PENALTY: \$900; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Hixson Lumber Sales of Texas, Inc.; DOCKET NUMBER: 2005-0206-PST-E; IDENTIFIER: PST Facility Identification Number 63446, RN101544617; LOCATION: Caddo Mills, Hunt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$800; ENFORCEMENT COORDINATOR: Brent Hurta, (512)

239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Bahadur Alibhai dba Hub Food Store; DOCKET NUMBER: 2004-2033-PST-E; IDENTIFIER: PST Facility Identification Number 6246, RN101547677; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,090; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: IU Merger Sub, Inc.; DOCKET NUMBER: 2005-0079-MWD-E; IDENTIFIER: TPDES Permit Number 13866-001, RN100822576; LOCATION: near Austin, Williamson County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13866-001, and the Code, §26.121(a), by failing to comply with its permitted effluent limitations; PENALTY: \$3,840; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: King's Crossing Golf & Country Club, Inc.; DOCKET NUMBER: 2005-0189-PST-E; IDENTIFIER: PST Registration Number 44631, RN101434504; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: country club which dispenses fuel for golf course maintenance equipment; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(a) and (c)(1), by failing to provide a method of release detection; and 30 TAC §303.71 and the Code, §5.702, by failing to pay watermaster assessment/South Texas fees and associated late fees; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Josephina Estella dba La Bodega Quick Stop 2; DOCKET NUMBER: 2004-2019-PST-E; IDENTIFIER: PST Identification Number 14468, RN101858462; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$3,880; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(11) COMPANY: Love's Travel Stops & Country Stores, Inc. dba Loves Country Store 270; DOCKET NUMBER: 2004-1772-IHW-E; IDENTIFIER: PST Identification Number 66875, RN102013240; LOCATION: Ranger, Eastland County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized discharge from the oil-water separator; PENALTY: \$600; ENFORCEMENT COORDINATOR: Mauricio Olaya, (915) 834-4949; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: Lucky Lady Oil Company dba Super Lucky Lady 3; DOCKET NUMBER: 2004-1951-PST-E; IDENTIFIER: PST Identification Number 10757, RN100539667; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$7,005; ENFORCEMENT COORDINATOR:

Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: MFP Gas Service Company, L.C. dba Highway Oil; DOCKET NUMBER: 2004-1700-PST-E; IDENTIFIER: PST Identification Number 1274, RN101565356; LOCATION: White Settlement, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that all USTs are properly identified; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: M.Y.M. Investment Inc. dba Kwik & Save Food Store; DOCKET NUMBER: 2004-1800-PST-E; IDENTIFIER: PST Identification Number 45095, RN102394160; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Oscar Food Corp. dba Circle A. Grocery Store; DOCKET NUMBER: 2004-2116-PST-E; IDENTIFIER: PST Identification Number 8919, RN102409034; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: S. D. Harrison dba San Pedro Village; DOCKET NUMBER: 2005-0060-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 2330046, RN102672839; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(A), (f)(2), (j), and (m)(1)(A) and (B), by failing to operate the system under the direct supervision of a certified operator, by failing to have the water system's operating records available for review, by failing to obtain customer service agreements and customer service inspections prior to providing water service, and by failing to conduct an annual inspection of the ground storage tank and pressure tank; 30 TAC §290.41(c)(1)(F) and (3)(N), by failing to provide a sanitary control easement for the well and by failing to have an operational flow meter; and 30 TAC §290.110(e)(4), by failing to submit a quarterly distribution report for PWS; PENALTY: \$1,955; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(17) COMPANY: Mohammad Ghorashi dba Super Quick Market; DOCKET NUMBER: 2005-0026-PST-E; IDENTIFIER: PST Facility Identification Number 18875, RN101495026; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(18) COMPANY: Loan Nguyen dba Super Stop Foodmart; DOCKET NUMBER: 2005-1940-PST-E; IDENTIFIER: PST Facility Identification Number 8062, RN101443729; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C)

and (4)(C) and the Code, §26.3475(d), by failing to conduct regular inspections of an impressed current cathodic protection system and by failing to inspect and test corrosion protection systems; 30 TAC §334.8(c)(5)(C), by failing to permanently label all tanks fill pipes; 30 TAC §334.50(b)(1)(A) and (2) and the Code, §26.3475(a) and (c), by failing to ensure that all USTs are monitored for releases and by failing to ensure that all piping associated with the USTs are monitored for releases; and 30 TAC §334.48(c), by failing to conduct inventory control; PENALTY: \$7,616; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Thomas Petroleum Ltd. dba 77 Quick Stop; DOCKET NUMBER: 2005-0204- PST-E; IDENTIFIER: PST Facility Identification Number 65484, RN102275062; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees; PENALTY: \$3,150; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Tradesman, L.L.C.; DOCKET NUMBER: 2004-1313-EAQ-E; IDENTIFIER: Edwards Aquifer (EAQ) Site Registration Number 13-04021801, RN102565314; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: abandoned quarry pit; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an EAQ protection plan; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: U.S. Denro Steels, Inc.; DOCKET NUMBER: 2005-0066-AIR-E; IDENTIFIER: Air Account Number C10170H, RN100217421; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: steel plate mill; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2), and 122.146(1) and (2), Air Permit Number O-01832, and THSC, §382.085(b), by failing to submit the annual Title V compliance certification and semiannual deviation reports; and 30 TAC §§21.4(3), 101.24(a), and 335.323, and the Code, §5.702(a), by failing to pay late fees; PENALTY: \$3,620; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Universal Transport, Inc.; DOCKET NUMBER: 2005-0274-PST-E; IDENTIFIER: RN103142667; LOCATION: Kountze, Hardin County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$560; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: V&M Star, A Partnership with General and Limited Partners, LP; DOCKET NUMBER: 2004-1919-IWD-E; IDENTIFIER: TPDES Permit Number 0003787000, RN100215474; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: tubular goods production and end finishing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0003787000, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: \$5,960; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Carl Wachsmann dba Wachsmann Store; DOCKET NUMBER: 2005-0397- PST-E; IDENTIFIER: PST Facility Identification Number 6135, RN101700623; LOCATION: Paige, Lee County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,280; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339- 2929.

(25) COMPANY: Waterside Corporation dba Bayview Marina; DOCKET NUMBER: 2004- 2012-PST-E; IDENTIFIER: PST Facility Identification Number 64729, RN102434081; LOCATION: Rowlett, Dallas County, Texas; TYPE OF FACILITY: marina with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and the Code, §26.3467(a), by failing to renew a delivery certificate by timely and proper submission of a new UST registration and self-certification form and by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases; and 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and available for inspection; PENALTY: \$6,120; ENFORCEMENT COORDINATOR: Sunday Udootok, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200501513

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 12, 2005

### Public Notice of a Change in the Remedial Action for the Materials Recovery Enterprises State Superfund Site

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a change in the remedial action for the Materials Recovery Enterprises state Superfund site (the site), in accordance with 30 Texas Administrative Code §335.349(b)(2). A copy of this notice will also be published in the local newspaper.

The site is located approximately 1/4 mile north of Farm-to Market Road 604 and 1/2 mile east of U.S. 83, approximately four miles southwest of Ovalo, Taylor County, Texas. The United States Air Force, operated the site as an F-Class Intercontinental Ballistic Missile Site in the 1960s. In 1977, Materials Recovery Enterprises, Inc. acquired and operated the facility as a Class I industrial solid waste management facility and utilized the decommissioned missile silo to dispose of waste waters from the metal finishing and electroplating industries. Wastes were accepted at the site from approximately 1979 to 1984.

A public meeting was held on July 31, 2003, to receive comments on the remedial action, which consisted of removal and treatment of the majority of the silo water and then spray evaporation in an on-site irrigation area. Additionally, the silo was to be filled with a combination of soil fill, flowable fill, and/or low strength concrete. An Administrative Order (Docket Number 2002-0835-SPF) requiring certain agreeing parties to implement the selected remedial action was issued by the commission on September 12, 2003.

During implementation of the selected remedial action approximately two feet per day of silo water was evaporated on-site during the summer and fall of 2004. However, during August, October, and November of 2004 excessive rainfall created a large volume of storm water which

was captured in the on-site irrigation area, thus negating much of the progress in water evaporation.

Therefore, the TCEQ intends to modify the selected remedial action such that accumulated storm water and approximately half of the silo water would be disposed of in an approved off-site disposal well. The remaining silo water would be solidified using fluidized bed ash and then returned to the silo to form a solid fill. Other aspects of the previously selected remedy would be unchanged.

The change in the remedy affects the scope, performance, or cost of the selected remedial action, but uses the same approach and results in a remedial action at least as protective as the originally proposed remedy.

For further information, please contact the project manager, Jeffrey E. Patterson, Texas Commission on Environmental Quality, Remediation Division, at (512) 239-2489, or Courtney Hill, attorney, TCEQ Litigation Division at (512) 239-2436.

TRD-200501514

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: April 12, 2005

## General Land Office

### Notice of Intent to Make Minor Changes to the Texas Coastal Impact Assistance Program Plan and Request for Public Comment

The Texas General Land Office (Land Office) seeks public comment regarding proposed minor changes to the Texas Coastal Impact Assistance Plan (Plan), found on the Land Office's web site at [www.glo.state.tx.us/coastal/ciap/plan/index.html](http://www.glo.state.tx.us/coastal/ciap/plan/index.html). The Plan identifies procedures for the expenditure of federal funds awarded to Texas under the Coastal Impact Assistance Program (CIAP).

The Plan contains procedures for the "Land Office Allocation of State's Portion of CIAP Funding" in Section IV.A.i. This Section of the Plan provides for the reallocation of funds to other projects should a project be completed under budget. The Plan does not, however, contain procedures for the Land Office's approval of changes to an authorized project, nor does it provide for the allocation of unused funds from projects terminated due to the inability of a project sponsor to complete an authorized project.

The proposed minor changes will provide procedures for authorizing a change to a project that is consistent with the project purposes in the approved CIAP Plan. The proposed minor changes will also allow the reallocation of unused funds, provided that the reallocated funds are used for projects that are directly and immediately relevant to the goals of the CIAP. The modified section of the Plan would read as follows:

#### i. Land Office Allocation of State Portion of CIAP Funding

The Land Office received 129 projects requesting CIAP funding, totaling approximately \$135 million. In evaluating and selecting projects, priority was given to projects that were located inside the coastal zone; provided broad geographic distribution; and maximized environmental

and economic benefits to the entire coast. The Land Office dedicated the State portion of the CIAP funds to the following uses: coastline protection, education and research, habitat conservation, growth management, and wetlands conservation. It should be noted that most of the projects selected fit into more than one category; therefore, the predominant project purpose was used to categorize the projects.

Coastline Protection \$477,000

Education and Research \$2,448,435

Habitat Conservation \$3,545,000

Growth Management \$1,261,000

Wetlands Conservation \$1,977,750

The projects selected for state CIAP funding are specifically described on NOAA checklists and organized alphabetically by project name in Appendix D and project locations are depicted on a map in Appendix E. **Should it be necessary to make a change to a selected project, the Land Office may authorize the change if it is consistent with the allowable CIAP project purposes. NOAA will be notified in advance of any project change.** The project budgets are based on the best available information and it is anticipated that funds will be expended as budgeted; however, it is entirely possible that a project may come in under budget, **or that a project may be terminated because it is impossible to carry out the project.** In either [that] event, remaining unused funds will be allocated to one or more of the selected projects that did not receive the full amount requested or to one or more projects identified by the Land Office as both essential to coastal resource management and directly and immediately relevant to the stated goals of the Coastal Impact Assistance Program. NOAA will be notified in advance of any reallocation among the selected projects.

The Land Office is authorized to make minor changes to the Plan in accordance with the CIAP Legislation, Section 31(d)(4) of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a), and the *Final Coastal Impact Assistance Program Administration and Plan Development Guidance*, 66 Federal Register 51396-51400, October 9, 2001.

Information regarding administration of the CIAP and the Plan may be found on the Land Office web site at <http://www.glo.state.tx.us/coastal/ciap/index.html>. Comments or questions may be submitted to Deborah Cantu, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas, 78711-2873, [deborah.cantu@glo.state.tx.us](mailto:deborah.cantu@glo.state.tx.us), facsimile (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. thirty days after the date of publication of this notice in the *Texas Register*.

TRD-200501523

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: April 13, 2005

## Department of State Health Services

### Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Brownsville	SOMA Forwarding Corporation	L05846	Brownsville	00	03/21/05
Brownwood	Brownwood Specialty Group DBA BSG Imaging	L05878	Brownwood	00	03/17/05
Corpus Christi	Samuel Duro Oloyo M.D. DBA South Texas Medical Associates	L05881	Corpus Christi	00	03/11/05
Garland	e+ PET Imaging XII Lp DBA PET Imaging of Garland	L05875	Garland	00	03/21/05
Katy	Physicians Empowerment Group LLC	L05876	Katy	00	03/25/05
Southlake	Healthcare Associates of Southlake LLP DBA Executive Medicine of Southlake	L05854	Southlake	00	03/21/05

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License #	City	Amendment #	Date of Action
Alvin	O & D USA Inc	L01422	Alvin	60	03/17/05
Austin	HTI/Venture DBA North Austin Medical Ctr	L04910	Austin	46	03/17/05
Austin	Austin Radiological Association	L00545	Austin	105	03/17/05
Austin	HTI/ADC Venture DBA North Austin Medical Center	L04910	Austin	47	03/22/05
Austin	Columbia/St Davids Healthcare System LP DBA St Davids Medical Center	L05856	Austin	01	03/24/05
Austin	Seton Medical Center	L02896	Austin	81	03/25/05
Austin	Austin Radiological Association	L00545	Austin	106	03/28/05
Clarksville	East Texas Medical Center Clarksville DBA ETMC Clarksville	L02978	Clarksville	21	03/16/05
Cleveland	Cleveland Regional Medical Center LP	L02055	Cleveland	32	03/23/05
College Station	College Station Hospital LP DBA College Station Medical Center	L02559	College Station	57	03/16/05
College Station	O I Analytical	L04238	College Station	12	03/25/05
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	82	03/14/05
Corpus Christi	Riverside Hospital inc DBA Northwest Regional Hospital	L02977	Corpus Christi	34	03/18/05
Dallas	Baylor College University Medical Center	L01290	Dallas	70	03/21/05
Denton	Triad Denton Hospital LP DBA Denton Community Hospital	L04003	Denton	36	03/22/05
Denton	Trace Radiochemicals Inc	L05435	Denton	08	03/01/05
Diboll	Tin Inc DBA Temple Inland Fiber Products Operation	L00935	Diboll	25	03/17/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	03	03/23/05
Fort Worth	Computalog Wireline Products Inc.	L00747	Fort Worth	68	03/18/05
Fort Worth	Healthcare of Texas Inc	L05473	Fort Worth	14	03/22/05
Glen Rose	Glen Rose Medical Foundation Inc DBA Glen Rose Medical Center	L03225	Glen Rose	20	03/17/05
Houston	Northwest Cardiology Consultants PA	L05795	Houston	02	03/15/05
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	48	03/16/05
Houston	Mallinckrodt Medical Inc	L03008	Houston	69	03/17/05
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	96	03/18/05
Houston	The PET Scan Center	L05411	Houston	06	03/24/05
Houston	Cardinal Health	L05536	Houston	13	03/22/05
Houston	Domingo G Gonzalez Jr M.D. PA	L05283	Houston	06	03/22/05
Houston	e+ PET Imaging VII LP DBA PET Imaging of Houston – West	L05806	Houston	01	03/23/05
Houston	Angiocardiatic Care of Texas PA	L05011	Houston	08	03/23/05
Kerrville	Sid Peterson Memorial Hospital	L01722	Kerrville	31	03/16/05
Longview	Eastman Chemicals Company	L00301	Longview	99	03/25/05
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	02	03/28/05
Lubbock	Methodist Diagnostic Imaging DBA Covenant Diagnostic Imaging	L03948	Lubbock	36	03/16/05
McAllen	Valley Heart Consultants	L05330	McAllen	05	03/25/05
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	36	03/17/05
New Braunfels	Cancer Care Network of South Texas PA	L05717	New Braunfels	04	03/22/05
Odessa	Cemex Cement of Texas LP	L00118	Odessa	23	03/24/05
Paris	Turner Industries Group LLC DBA Pipe Fabrication Div TX Operations	L05237	Paris	04	03/24/05
Pasadena	Nuclear Medicine Associates PA	L05712	Pasadena	02	03/24/05
Rockdale	TXU Generation Co LP DBA TXU Power	L04075	Rockdale	06	03/14/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	201	03/15/05
San Antonio	Southwest Research Institute	L00775	San Antonio	71	03/16/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	202	03/28/05
San Marcos	Texas State University	L03321	San Marcos	18	03/23/05
Sherman	North Texas Cardiology	L05395	Sherman	08	03/17/05
Snyder	DM Cogdell Memorial Hospital	L02409	Snyder	27	03/16/05
Sugar Land	Draeger Safety Inc	L05757	Sugar Land	01	03/17/05
Temple	Wilsonart International	L02857	Temple	20	03/22/05
Throughout Tx	The University of Texas at Austin	L00485	Austin	68	03/24/05
Throughout Tx	Texas Department of Transportation	L00197	Austin	106	03/25/05
Throughout Tx	Lower Colorado River Authority	L02738	Austin	35	03/24/05
Throughout Tx	Radiation Consultants Inc	L02179	Deer Park	36	03/15/05
Throughout Tx	Oilfield Prolog Services Inc DBA Pro-Log	L01828	Denver City	25	03/25/05



CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Probe Technology Services Inc.	L05112	Fort Worth	14	03/23/05
Throughout Tx	Houston City of Department of Health and Human Services	L00149	Houston	68	03/17/05
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	60	03/14/05
Throughout Tx	Stork Southwestern Laboratories Inc.	L00299	Houston	121	03/18/05
Throughout Tx	QC Laboratories Inc.	L04750	Houston	12	03/22/05
Throughout Tx	Material Inspection Technology	L05672	Houston	12	03/18/05
Throughout Tx	Mandes Inspection & Testing Services Inc	L05220	Houston	49	03/21/05
Throughout Tx	Spectro Analytical Instruments Inc.	L02788	Marble Falls	45	03/16/05
Throughout Tx	Midwest Inspection Services	L03120	Perryton	77	03/21/05
Throughout Tx	Total Petrochemicals USA Inc	L03498	Port Arthur	21	03/17/05
Throughout Tx	Plant and Pipeline Inspection Inc.	L05746	Rockport	04	03/15/05
Throughout Tx	Thermo Measuretech	L03524	Round Rock	66	03/24/05
Throughout Tx	All American Inspection Inc.	L01336	San Antonio	51	03/24/05
Throughout Tx	Young Contractors Inc.	L04095	Waco	17	03/22/05
Tyler	Tyler Cardiovascular Consultants PA CVC	L05242	Tyler	07	03/17/05
Victoria	E I Dupont De Nemours and Company	L05800	Victoria	02	03/22/05
Webster	CHCA Clear Lake LP DBA Clear Lake Regional Medical Center	L01680	Webster	67	03/16/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Physician Reliance Network Inc. DBA Texas Cancer Center Abilene	L05127	Abilene	08	03/18/05
Amarillo	Cardiology Center of Amarillo LLP	L05736	Amarillo	02	03/21/05
Arlington	Troxler Electronic Laboratories	L01296	Arlington	37	03/14/05
Arlington	USMD Hospital at Arlington	L05727	Arlington	02	03/21/05
Athens	East Texas Medical Center	L02470	Athens	37	03/21/05
Austin	Austin White Lime Company	L02941	Austin	08	03/21/05
Austin	Heart of Texas Cardiology PA	L05622	Austin	02	03/21/05
Beaumont	E I Dupont De Nemours & Co Inc.	L00517	Beaumont	69	03/14/05
Beaumont	BASF Corporation	L02016	Beaumont	23	03/18/05
Bedford	Harris Methodist Hospital – HEB	L02303	Bedford	29	03/21/05
Commerce	Texas A&M University – Commerce	L00604	Commerce	38	03/21/05
Conroe	River Pointe Heart and Vascular Center	L05728	Conroe	02	03/21/05
Corpus Christi	Thomas Spann Clinic PA	L05733	Corpus Christi	02	03/21/05
Dallas	Vernon Horn MD & James D Boehr MD	L05508	Dallas	02	03/22/05
Denton	Tanveer A Qureshi MD PA	L04815	Denton	05	03/25/05
Dumas	Memorial Hospital	L03540	Dumas	19	03/21/05
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	04	03/25/05
El Paso	BRK Brands Inc	L03725	El Paso	11	03/18/05
El Paso	El Paso Heart Center	L04828	El Paso	14	03/18/05
El Paso	Biotech Pharmacy Incorporated	L05335	El Paso	10	03/22/05

CONTINUED RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Fort Worth	Lockheed Martin Corporation DBA Lockheed Martin Aeronautics Company	L05633	Fort Worth	01	03/25/05
Galveston	The University of Texas Medical Branch	L01299	Galveston	66	03/14/05
Georgetown	Georgetown Healthcare System	L03152	Georgetown	32	03/21/05
Gonzales	KI4U Inc	L05515	Gonzales	02	03/22/05
Houston	Real Inspection Training Engineering	L05136	Houston	12	03/17/05
Houston	Rice University	L04639	Houston	08	03/22/05
Houston	Columbia/HCA Healthcare Corp	L02473	Houston	49	03/21/05
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05493	Houston	05	03/22/05
Houston	Rice University	L01772	Houston	18	03/21/05
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	23	03/25/05
Humble	Goolsby Testing Laboratories Inc	L03115	Humble	75	03/18/05
Irving	Abbott Laboratories	L04841	Irving	08	03/18/05
Irving	University of Dallas	L01194	Irving	12	03/21/05
Killeen	George S Rebecca MD FACC DBA Texas Cardiovascular Medicine	L05099	Killeen	06	03/22/05
Kosse	U S Slica Company	L03150	Kosse	09	03/18/05
La Porte	Sunoco Inc R&M DBA Sunoco Chemicals	L02153	La Porte	30	03/18/05
La Porte	Sunoco Inc (R&M) DBA Sunoco Chemicals	L02778	La Porte	16	03/18/05
La Porte	OXY Vinyls LP	L02469	La Porte	18	03/25/05
Laredo	Laredo Medical Center DBA A R Sanchez Sr & Iris Sanchez Stewart Cancer Center	L05305	Laredo	06	03/22/05
Lewisville	Cardiovascular Specialists PA	L05507	Lewisville	03	03/22/05
Lubbock	Covenant Health System DBA Covenant Imaging Center	L04005	Lubbock	16	03/22/05
Lubbock	Covenant Health System DBA Covenant Imaging Center	L04005	Lubbock	15	03/21/05
Lubbock	Covenant Medical Group DBA Cardiology Assoc Covenant Med Group	L04468	Lubbock	17	03/18/05
Lubbock	Radiation Oncology of the South Plains PA	L05484	Lubbock	06	03/21/05
Lubbock	Cardiac Diagnostic Center	L05506	Lubbock	01	03/22/05
Lubbock	Lubbock Heart Hospital LP	L05742	Lubbock	01	03/25/05
Lufkin	Abitibi Consolidated Corp	L03870	Lufkin	17	03/21/05
McAllen	Valley Heart Consultants	L05330	McAllen	06	03/25/05
McKinney	Cardiac Center of Texas PA	L05744	McKinney	04	03/25/05
Mexia	Parkview Regional Hospital	L05144	Mexia	18	03/21/05
Midlothian	Chaparral Steel Midlothian LP	L02015	Midlothian	27	03/21/05
Mission	Mission Hospital	L02802	Mission	34	03/21/05
Pampa	Coronado Community Hospital Inc DBA Columbia Medical Center of Pampa	L03123	Pampa	20	03/18/05
Pampa	Mundy Maintenance and Service LLC	L04360	Pampa	28	03/22/05

CONTINUED RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Pasadena	Vista Community Medical Ctr LLC DBA Vista Medical Ctr Hospital	L05503	Pasadena	05	03/21/05
Pasadena	Premier Heart Specialists PA	L05750	Pasadena	02	03/25/05
Perryton	Midwest Inspection Services	L03120	Perryton	76	03/18/05
Pittsburg	Southwestern Electric Power Company	L02008	Pittsburg	17	03/18/05
Port Arthur	Christus St Mary Hospital DBA Christus Health	L01212	Port Arthur	86	03/14/05
Port Arthur	Smith and Thome Cardiovascular Consultants LLP	L05743	Port Arthur	01	03/21/05
Port Arthur	Motiva Enterprises LLC	L05211	Port Arthur	05	03/21/05
Quitman	East Texas Medical Center Quitman	L03376	Quitman	15	03/18/05
Richardson	The University of Texas at Dallas	L02114	Richardson	52	03/18/05
San Antonio	SW Diagnostic Center PA DBA Southwest Diagnostic Imaging Ctr PA	L03763	San Antonio	08	03/15/05
San Antonio	Methodist Healthcare System of San Antonio DBA Southwest Texas Methodist Hospital	L05076	San Antonio	13	03/18/05
San Antonio	San Antonio Nuclear Cardiovascular Services Inc	L05134	San Antonio	10	03/25/05
San Marcos	Central Texas Medical Center	L03133	San Marcos	21	03/21/05
Seguin	Guadalupe Valley Hospital	L02292	Seguin	25	03/18/05
Sherman	Sherman Heart Group LLP	L05498	Sherman	03	03/22/05
Stephenville	Stephenville Medial and Surgical Clinic	L05309	Stephenville	06	03/21/05
Stephenville	Tarleton State University	L05612	Stephenville	03	03/21/05
Sugar Land	Draeger Safety Inc	L05757	Sugar Land	02	03/25/05
Temple	Texas A&M University System Health Sci Ctr	L05494	Temple	05	03/22/05
Texarkana	Texarkana PET Imaging Institute LP	L05495	Texarkana	07	03/22/05
The Woodlands	e+ PET Imaging VIII LP DBA PET Imaging of The Woodlands	L05747	The Woodlands	06	03/25/05
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	41	03/25/05
Throughout Tx	Patterson Tubular Services Inc	L03148	Channelview	24	03/18/05
Throughout Tx	Henley-Johnston & Associates Inc	L00286	Dallas	29	03/17/05
Throughout Tx	IES Incorporated	L03694	Denver City	08	03/18/05
Throughout Tx	City of Eagle Pass	L05758	Eagle Pass	01	03/25/05
Throughout Tx	Peachtree Construction Co	L05401	Fort Worth	06	03/22/05
Throughout Tx	Comprobe Incorporated	L01667	Fort Worth	28	03/18/05
Throughout Tx	Tolunay-Wong Engineers Inc	L04848	Houston	07	03/22/05
Throughout Tx	Ground Technology Inc	L05125	Houston	09	03/14/05
Throughout Tx	Kenneth E Tand and Associates Inc	L05137	Houston	04	03/21/05
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	61	03/18/05
Throughout Tx	Longview Inspection Inc	L01774	La Porte	212	03/21/05
Throughout Tx	Sonic Surveys Inc	L02622	Mont Belvieu	20	03/18/05
Throughout Tx	Royal Wireline Inc	L03110	Riviera	23	03/14/05
Throughout Tx	Plant and Pipeline Inspection Inc.	L05746	Rockport	05	03/25/05
Throughout Tx	Texas Oncology PA DBA North Texas PET Imaging	L05502	Sherman	07	03/21/05
Throughout Tx	Wrangler Wireline Inc	L05404	Sour Lake	01	03/22/05
Throughout Tx	Durwood Greene Construction LP	L04753	Stafford	07	03/22/05
Throughout Tx	K & N Perforators Inc	L02300	Victoria	26	03/21/05

CONTINUED RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	35	03/17/05
Tyler	Stewart Regional Blood Center	L04826	Tyler	07	03/18/05
Tyler	La Gloria Oil and Gas Company	L02289	Tyler	12	03/18/05
Tyler	Tyler Cardiovascular Consultants PA CVC	L05242	Tyler	08	03/22/05
Victoria	Citizens Medical Center	L01544	Victoria	20	03/14/05
Waco	Baylor University	L00343	Waco	16	03/25/05
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	24	03/18/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Del Rio	Broad Horizon Imaging Inc DBA Broad Horizon	L05720	Del Rio	01	03/17/05
Fort Worth	TIDC Inc DBA Texas Imaging and Diagnostic Center	L05247	Fort Worth	14	03/28/05
Houston	River Oaks Imaging and Diagnostic LP	L05679	Houston	01	03/18/05
Throughout Tx	Hayter Engineering Inc	L05139	Paris	05	03/23/05
Throughout Tx	Sunoco Inc (R&M) DBA Sunoco Chemicals	L03421	Pasadena	13	03/09/05

LICENSE EXEMPTION ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Fort Worth	City of Fort Worth	L01928	Fort Worth		03/23/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200501465  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: April 7, 2005



Notice of Agreed Order with Texas NDT Company

On April 7, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Texas NDT Company (licensee-L05089) of

Pasadena. A total administrative penalty in the amount of \$4,000 was assessed the licensee for violations of 25 Texas Administrative Code, Chapter 289. Of the total administrative penalty, \$3,000 will be probated for a period of one year, and will be forgiven if the registrant complies with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501521

Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: April 13, 2005

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**Notice of Revocation of the Certification of Mammography Systems of Cyvon Imaging, Inc., dba Community Diagnostics**

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certification of mammography systems: Cyvon Imaging, Inc. dba Community Diagnostics, Dallas, Certification of Mammography Systems No. M00702.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501522  
Cathy Campbell  
Director, Legal Services  
Department of State Health Services  
Filed: April 13, 2005

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**Houston-Galveston Area Council**

**Request for Proposals**

The Houston-Galveston Area Council solicits qualified organizations to operate the Gulf Coast Workforce Board's regional system, known as The WorkSource. A proposal package will be available for download at <http://theworksource.org/4contractor/rfp.html> and <http://h-gac.com> beginning at 12:00 noon Central Standard Time on Thursday, April 14, 2005. Hard copies of the proposal package will also be available at that time. A bidder's conference is scheduled for Monday, April 25, 2005, from 9:00 a.m. to 10:30 a.m. at Houston-Galveston Area Council offices, 3555 Timmons Lane, 2nd Floor, Conference Room A.

Proposals are due at H-GAC offices on or before 12:00 noon Central Daylight Time on Thursday, May 26, 2005. Mailed proposals must be postmarked no later than Monday, May 23, 2005. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or [ckimmick@theworksource.org](mailto:ckimmick@theworksource.org) or visit the web site to request a proposal package.

TRD-200501520  
Jack Steele  
Executive Director  
Houston-Galveston Area Council  
Filed: April 12, 2005

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**Texas Department of Insurance**

**Company Licensing**

Application to change the name of EMPLOYERS NATIONAL INSURANCE COMPANY to DUNNOTTAR INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Decatur, Georgia.

Application for TEXAS LEGAL PROTECTION PLAN, INC., to use the assumed name THE LEGAL PROTECTION PLAN a domestic Non-Profit Prepaid Legal Company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200501527  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 13, 2005

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**Notice of Public Hearing**

The Texas Department of Insurance (the department) will conduct a public hearing under Docket Number 2613 for the purpose of selecting a licensing testing contractor to provide certain services under the Insurance Code, Article 21.01-1 as identified in RFP No. 05-RBD-LicTesting1 issued on February 1, 2005. A hearing is scheduled on May 4, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas. The hearing is held in compliance with the Insurance Code, Article 21.01-1, which requires that the department hold a public hearing prior to the selection of a licensing testing contractor.

**Project Description.** The selected contractor shall provide the department with testing services that include examination development, test scheduling, application processing, examination site arrangement and the test's administration, grading, reporting and analysis. The selected contractor shall cooperate with advisory boards, if any, appointed by the Commissioner of Insurance under the Insurance Code, Article 21.01-1.

**Contacts.** Parties may request a copy of the department's RFP by contacting Ms. Regina B. Durden, Director of Purchasing and Contract Administration, Mail Code 108-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 463-6174. For further information regarding the hearing, parties should contact the Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, telephone (512) 463-6326.

TRD-200501525  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 13, 2005

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**Third Party Administrator Applications**

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of INTERMEDIARY INSURANCE SERVICES, INC., a foreign third party administrator. The home office is SAN FRANCISCO, CALIFORNIA.

Application for admission to Texas of HF Administrative Services, Inc., a foreign third party administrator. The home office is NEW YORK, NEW YORK.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200501526

Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 13, 2005

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## Texas Lottery Commission

### Instant Game Number 550 "Mustang Money"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 550 is "MUSTANG MONEY". The play style is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 550 shall be \$3.00 per ticket.

#### 1.2 Definitions in Instant Game No. 550.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, CAR SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$8.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$200, \$1,000, \$2,000, \$20,000 or MUSTANG SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 550 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
CAR SYMBOL	AUTO
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$1,000	ONE THOU
\$2,000	TWO THOU
\$20,000	20 THOU
MUSTANG	2005 V6

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 550 - 1.2E

CODE	PRIZE
THR	\$3.00
FIV	\$5.00
EGT	\$8.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$3.00, \$5.00, \$8.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$200.

I. High-Tier Prize - A prize of \$1,000, \$2,000, \$20,000 or MUSTANG V6 CONVERTIBLE.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (550), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 550-0000001-001.

L. Pack - A pack of "MUSTANG MONEY" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MUSTANG MONEY" Instant Game No. 550 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A

prize winner in the "MUSTANG MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol the player wins prize shown for that number. If a player reveals a car symbol the win player a 2005 Ford Mustang V6 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;



15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

## 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. No duplicate Winning Numbers play symbols.

E. The Your Number car play symbol and Mustang prize symbol will only appear on intended vehicle winners as dictated by the prize structure and will only appear with each other.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

## 2.3 Procedure for Claiming Prizes.

A. To claim a "MUSTANG MONEY" Instant Game prize of \$3.00, \$5.00, \$8.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified

promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MUSTANG MONEY" Instant Game prize of \$1,000, \$2,000, \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim the top prize of a Mustang V6 Convertible car, the claimant must sign the winning ticket, thoroughly complete a claim form, and present both at any Texas Lottery Claim Center. The claimant must also present a valid driver's license and proof of automobile liability insurance. Any costs incurred to take possession of the car shall be responsibility of the prizewinner. When awarding the top non-cash prize, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall pay the federal income tax at a rate set by the IRS for withholding, if required.

D. As an alternative method of claiming a "MUSTANG MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MUSTANG MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MUSTANG MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing,

distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 550. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 550 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	672,000	8.93
\$5	384,000	15.63
\$8	120,000	50.00
\$10	48,000	125.00
\$15	48,000	125.00
\$20	48,000	125.00
\$50	48,000	125.00
\$100	4,200	1,428.57
\$200	3,200	1,875.00
\$1,000	350	17,142.86
\$2,000	100	60,000.00
\$20,000	12	500,000.00
MUSTANG	4	1,500,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 550 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 550, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

Instant Game Number 557 "Money Game"

1.0 Name and Style of Game.

A. The name of Instant Game No. 557 is "MONEY GAME". The play style is "key number match.

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 557 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 557.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, or \$5,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 557 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$5,000	FIV THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 557 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>ONE</b>	<b>\$1.00</b>
<b>TWO</b>	<b>\$2.00</b>
<b>FOR</b>	<b>\$4.00</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>TWN</b>	<b>\$20.00</b>

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$5,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (557), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 557-0000001-001.

L. Pack - A pack of "MONEY GAME" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONEY GAME" Instant Game No. 557 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in

Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MONEY GAME" Instant Game is determined once the latex on the ticket is scratched off to expose 11(eleven) Play Symbols. If any of YOUR NUMBERS play symbols match the WINNING NUMBER play symbol the player wins PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate non-winning prize symbols on a ticket.

D. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY GAME" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY GAME" Instant Game prize of \$5,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY GAME" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONEY GAME" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "MONEY GAME" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

### 3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed

on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 557. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 557 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,753,920	8.62
\$2	907,200	16.67
\$4	181,440	83.33
\$5	120,960	125.00
\$10	120,960	125.00
\$20	75,600	200.00
\$50	8,820	1,714.29
\$100	2,835	5,333.33
\$500	819	18,461.54
\$5,000	63	240,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.77. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 557 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 557, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501508

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: April 12, 2005

### Instant Game Number 560 "Supercash"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 560 is "SUPERCASH". The play style is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 560 shall be \$2.00 per ticket.

#### 1.2 Definitions in Instant Game No. 560.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, SUPERCASH SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$2,000 or \$20,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 560 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
SUPERCASH SYMBOL	WIN ALL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$2,000	TWO THOU
\$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 560 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$2,000 or \$20,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (560), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 560-0000001-001.

L. Pack - A pack of "SUPERCASH" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPERCASH" Instant Game No. 560 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SUPERCASH" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol the player wins the

PRIZE shown for that number. If a player reveals a Supercash play symbol the player wins all 10 prizes shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.



17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Winning Numbers play symbols on a ticket.

D. No 3 or more like non-winning prize symbols on a ticket.

E. The win all symbol will only appear as dictated by the prize structure.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and \$5).

G. The win all symbol will never appear more than once on a ticket.

H. When the win all symbol is used, there will be no Your Number play symbols matching either Winning Number play symbols.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "SUPERCASH" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPERCASH" Instant Game prize of \$2,000 or \$20,000, the claimant must sign the winning ticket and present it at

one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPERCASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SUPERCASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SUPERCASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned

by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 560. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 560 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,280,160	7.87
\$4	695,520	14.49
\$5	120,960	83.33
\$10	131,040	76.92
\$20	40,320	250.00
\$50	40,320	250.00
\$200	13,020	774.19
\$2,000	64	157,500.00
\$20,000	14	720,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.34. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 560 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 560, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501509  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: April 12, 2005



Instant Game Number 562 "Lucky Diamonds"

1.0 Name and Style of Game.

A. The name of Instant Game No. 562 is "LUCKY DIAMONDS". The play style is "match up with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 562 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 562.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00,

\$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500, \$1,000 or WILD SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

**Figure 1: GAME NO. 562 - 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
WILD SYMBOL	DBLE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 562 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
ONE	\$1.00
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, \$50.00, \$100 or \$500.

I. High-Tier Prize - A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven

(7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (562), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 562-0000001-001.

L. Pack - A pack of "LUCKY DIAMONDS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page. A ticket will be folded over on both the front and back of the book so both ticket art and ticket backs are displayed in the shrink-wrap.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY DIAMONDS" Instant Game No. 562 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY DIAMONDS" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 (three) identical amounts the player wins that amount. If a player reveals 2 (two) identical amounts and a WILD play symbol the player wins double the amount shown. . No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in

the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more like symbols on a ticket.

C. No three pairs on a ticket.

D. No three like symbols on a ticket containing the doubler symbol.

E. The doubler symbol will only appear on intended winners as dictated by the prize structure.

F. The doubler symbol will only appear once on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY DIAMONDS" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY DIAMONDS" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS)

and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY DIAMONDS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "LUCKY DIAMONDS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "LUCKY DIAMONDS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 562. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 562 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,512,000	10.00
\$2	967,680	15.63
\$4	302,400	50.00
\$5	120,960	125.00
\$10	120,960	125.00
\$20	30,240	500.00
\$40	18,900	800.00
\$50	7,434	2,033.90
\$100	3,780	4,000.00
\$500	630	24,000.00
\$1,000	126	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.90. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 562 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 562, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200501511

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Filed: April 12, 2005

## North Central Texas Council of Governments

Request for Proposals to Facilitate the Development of a System-Wide Boarding and Alighting Study for the Fort Worth Transportation Authority (The T)

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is seeking written proposals from consultants to facilitate the development of a System-wide Boarding and Alighting Study for the Fort Worth Transportation Authority (The T). The project will be funded through the

2004-2005 Unified Planning Work Program (UPWP). Engineering services are not anticipated for this study. The consultant effort will be a survey of all radial, crosstown, feeder, circulator, express, rider request and tripper routes provided by The T. Trip-specific, stop-specific, and time-point specific data will be collected to analyze existing service and to plan future levels of bus service.

### Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, May 27, 2005, to Christie Zupancic, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, (817) 695-9267.

### Contract Award Procedures

The firm or individual selected to perform this study will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200501532  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: April 13, 2005

## Public Utility Commission of Texas

### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on April 6, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Taylor Telephone Cooperative, Inc. (Taylor) to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundary of the Nolan Exchange (Taylor) and the Sweetwater Exchange (SBC Texas). Docket Number 30986.

The Application: The minor boundary amendment is being filed to realign the boundary between Taylor's Nolan exchange and SBC Texas' Sweetwater exchange to allow Taylor to provide local exchange telephone service to one customer who is currently without service. SBC Texas has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30986.

TRD-200501479  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2005

### Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on April 8, 2005, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of Connect Paging, Incorporated, doing business as Get A Phone, for Designation as an Eligible Telecommunications Carrier Pursuant to U.S.C. §214(e) and as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 30991.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. Connect Paging, Incorporated, doing business as Get A Phone, seeks ETC/ETP designation in the study area of SBC, a non-rural incumbent local exchange carrier.

The Company holds Service Provider Certificate of Operating Authority Number 60530.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 12, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30991.

TRD-200501496  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 11, 2005

### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on April 8, 2005, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Joint Application of AEP Texas North Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities, Docket Number 30996.

The Application: AEP Texas Central Company (TCC) and LCRA Transmission Services Corporation (LCRA TSC) (Applicants) request approval to transfer from TCC to LCRA TSC two transmission facilities and associated certificate of convenience and necessity (CCN) rights. TCC holds CCN Number 30028 and LCRA TSC holds CCN Number 30110. TCC owns two 69 kV transmission lines located in Aransas County (the Rockport to Fulton transmission line) and Starr County (the Garceno to Roma transmission line), which are being rebuilt to 138 kV design standards and will be capable of 138 kV operation, although both facilities will continue to operate initially at 69 kV. The Rockport to Fulton transmission line rebuild project is contained within the Rebuild Rockport to Fulton 69 kV Line Project Agreement. The 7.35 mile line is located in Aransas County and is a rebuild of a 69 kV line from 4/0 to 795 ACSR conductor between the TCC Rockport and Fulton Substations. This transmission line will increase power transfer capacity in the Rockport area. The Garceno to Roma transmission line rebuild project is contained within the Project Agreement titled Rio Grande 69 kV to 138 kV Conversion Project. The 5.4 mile Garceno-Roma 69 kV transmission line is located in Starr County and is a rebuild of a 69 kV transmission line from 4/0 to 795 ACSR conductor between the TCC Garceno and Roma Substations. This transmission line is one of several listed in this project agreement that will resolve various overload conditions by several transmission facility outage conditions. For these transmission facilities, the existing 69 kV facilities are being removed and retired, and the rebuilding of the lines qualifies both as exempt CCNs under P.U.C. Substantive Rule §25.101(c)(5)(B). The Rockport to Fulton project is anticipated to be completed on June 2, 2005, and the Garceno to Roma project is anticipated to be completed on April 22, 2005.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas

(toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 30996.

TRD-200501517  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 12, 2005



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 5, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of OnStream Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 30978 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance services.

Applicant's requested SPCOA geographic area includes the area served by all Local Access and Transport Areas (LATAs) in the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 27, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30978.

TRD-200501477  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2005



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 7, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of VCI Company for a Service Provider Certificate of Operating Authority, Docket Number 30990 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and UNE P service.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at

1-888-782-8477 no later than April 27, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 30990.

TRD-200501495  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 11, 2005



#### Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 11, 2005, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Resaca Group, LLC). Docket Number 30864.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request to provide electric utility service to 6.675 acres of undeveloped land located on the frontage road of US 77. The estimated cost to BPUB to provide service to this proposed area is \$4,756.91. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 1, 2005, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 30864.

TRD-200501478  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2005



#### Notice of Filing Made for Approval of a Tariff Rate Change for a New Service Charge Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed by Industry Telephone Company (Industry) with the Public Utility Commission of Texas (commission) on March 28, 2005 to make a tariff rate change.

Docket Title and Number: Application of Comanche Industry Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171. Tariff Control Number 30928.

The Application: Industry has filed a statement of intent with the Commission to restructure its existing service charges, replace a service charge and introduce new service charges.



For a copy of the proposed tariffs or for further information regarding this application, customers should contact Industry Telephone Company at 17105 Fordtran Blvd., Industry, Texas 78944 or call (979) 357-4411 during regular business hours.

Customers have a right to petition the commission for a review of this application. If the commission receives a complaint relating to the proposed change from either an affected intrastate access customer or a group of affected intrastate access customers that, the preceding 12 months, the company billed more than 10% of its total intrastate gross access revenues, the application will be docketed. The deadline to comment or request to intervene in this proceeding is June 13, 2005. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800-735-2988.

TRD-200501516  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 12, 2005

## **Texas Department of Transportation**

Texas Department of Transportation, Aviation Division,  
Request for Proposal for Land Acquisition Services

Tejas Avco Inc. intends to engage a land acquisition firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. Tejas Avco will solicit and receive proposals for land acquisition firms as described below:

Airport Sponsor: Tejas Avco. Airport: Houston-Southwest. Airport Project Number: 0512HOUSW. The DBE goal is set at 0%. Project Manager is James Griffith, Jr.

Tejas Avco solicits proposals from land acquisition companies for: survey, appraisal, appraisal review, negotiations, relocation assistance if applicable, title services, closing and other services as required for land acquisition for an open to the public privately owned airport.

These services must be conducted and performed in compliance with 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federally Funded Project (URARPA). Appraisal and appraiser review must be completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).

Interested firms should submit proposals that must include:

1. No more than one page listing professional qualifications.
2. No more than two pages listing experience of the firm and team or individuals.
3. No more than one page describing ability to commit personnel, time and other resources to the project.
4. No more than two pages listing understanding of applicable rules, regulations, policies and other requirements associated with federally funded projects.
5. No more than three pages describing technical approach to land acquisition process.
6. Copy of license for appraiser, review appraisal and any other applicable licenses.

Four copies of the proposal shall be produced on 8.5" x 11" white paper. It shall be contained in a 3-ring binder. No introduction letter is needed. Do not include extraneous materials. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

Criteria for evaluation of proposal is listed below:

1. Professional Qualifications
2. Experience of the firm and team or individuals
3. Ability to commit personnel, time and other resources to the project
4. Understanding of applicable rules, regulations, policies and other requirements associated with federally funded projects.
5. Description of technical approach to land acquisition process.
6. Licensed appraiser, review appraiser and any other applicable licenses.

Four copies of the proposal must be postmarked by U. S. Mail by midnight May 13, 2005 (CDST). Mailing address: Texas Department of Transportation, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on May 16, 2005. Overnight address: Texas Department of Transportation, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. May 16, 2005 (CDST). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The sponsor selection committee will be composed of the airport owner team. The final selection by the committee will generally be made immediately following the completion of review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager at 1-800-68-PILOT, ext. 4519, or James Griffith, Project Manager for technical questions at 713-523-8702 (74568).

TRD-200501505  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: April 12, 2005

Texas Department of Transportation, Aviation Division,  
Request for Proposal for Professional Services

The City of Fort Worth through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division, will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Fort Worth, TxDOT CSJ No. 0502FTWRH; Scope: Request for proposals for an Airport System Plan that includes Fort Worth Alliance Airport, Fort Worth Meacham International Airport and Fort Worth Spinks Airport in accordance with the Federal Aviation Administration Advisory Circular, The Airport System Planning Process, AC No: 150/5070-7.

The HUB goal is set at 0%. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551 titled "Aviation Planning Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn551.doc>. The form may not be altered in any way. All printing must be in black ink on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Attention: To ensure utilization of the latest version of Form 551, firms are encouraged to download Form 551 from the TxDOT website as addressed above. Utilization of Form 551 from a previous download may not be the exact same format. Form 551 is an MS Word Template.)

Seven unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight May 13, 2005 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on May 16, 2005. Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Hand delivery must be received by 4:00 p.m. May 16, 2005 (CDST). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made immediately following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at [www.dot.state.tx.us/business/avnconsultinfo.htm](http://www.dot.state.tx.us/business/avnconsultinfo.htm). All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Michelle Hannah, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200501504

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: April 12, 2005

## **Texas Workers' Compensation Commission**

### **Invitation to Apply to the Medical Advisory Committee (MAC)**

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

#### **Primary**

- \* Dentist

- \* Employer

- \* General Public 1

#### **Alternate**

- \* Public Health Care Facility Representative

- \* Dentist

- \* Pharmacist

- \* Employer

- \* General Public 1

- \* Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www.twcc.state.tx.us> and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

**LEGAL AUTHORITY.** The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

**PURPOSE AND ROLE.** The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

**COMPOSITION.** Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine,

a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

**Terms of Appointment:** Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

**RESPONSIBILITY OF MAC MEMBERS.** Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

**Alternate Members.** Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

**Committee Officers.** The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

**Responsibilities of the Chairman.** Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

**COMMITTEE SUPPORT STAFF.** The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

**SUBCOMMITTEES.** The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is

needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

**WORK GROUPS.** When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

**WORK PRODUCT.** No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

**MEETINGS.** Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

**CONDUCT AS A MAC MEMBER.** Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501501

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: April 12, 2005

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

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### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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